

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2013-7, page 608.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for March 2013.

T.D. 9606, page 586.

Final regulations under section 304 of the Code addresses sales of stock between related corporations. The regulations finalize proposed regulations and remove temporary regulations that apply to certain sales of stock that are recharacterized as contributions and redemptions, but that are structured with a principal purpose of redesignating the issuing corporation or the acquiring corporation. The regulations affect persons treated as receiving distributions in redemption of stock as a result of such transactions.

Rev. Proc. 2013-17, page 612.

General rules and specifications for substitute forms and schedules. This procedure provides guidelines and general requirements for the development, printing, and approval of substitute tax forms. This procedure will be reproduced as the next revision of Publication 1167. Rev. Proc. 2011-61 superseded.

Rev. Proc. 2013-19, page 648.

This procedure extends the deadline to comply with the mandatory language requirements in Rev. Proc. 2013-14. Revenue Procedure 2013-14 modified.

EMPLOYEE PLANS

Notice 2013-11, page 610.

This notice provides guidance on the 25-year average segment rates that are applied to adjust the otherwise applicable 24-month average segment rates that are used to compute the minimum contribution requirements for single-employer defined benefit plans under section 430 of the Code and section 303 of the Employee Retirement Income Security Act of 1974 (ERISA) for plan years beginning in 2013. The guidance reflects the changes made to the Code and ERISA by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141.

Announcement 2013-15, page 652.

This announcement contains a revised Exhibit: Sample Notice to Interested Parties, attached to Rev. Proc. 2013-6, 2013-1 I.R.B. 198. The Exhibit is revised to include the correct addresses for submitting applications for determination letters and comments submitted by interested parties, in accordance with the corrections to Rev. Proc. 2013-6 made by Ann. 2013-13, 2013-9 I.R.B. 532. Rev. Proc. 2013-6 revised.

(Continued on the next page)

Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

T.D. 9605, page 587.

REG-155929-06, page 650.

Final and temporary regulations under section 509 of the Code, required by the Pension Protection Act of 2006, provide rules for supporting organizations that are operated “in connection with” their supported organization(s) (called “Type III supporting organizations”). These final regulations specify the information that Type III supporting organizations are required to provide their supported organizations. The final regulations also provided the criteria that Type III supporting organizations must satisfy in order to qualify as “functionally integrated.” For those Type III supporting organizations that do not qualify as functionally integrated, the temporary regulations require an annual payout of the greater of 3.5 percent of the fair market value of non-exempt-use assets or 85 percent of adjusted net income.

EMPLOYMENT TAX

Rev. Proc. 2013-17, page 612.

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EXCISE TAX

T.D. 9605, page 587.

REG-155929-06, page 650.

Final and temporary regulations under section 509 of the Code, required by the Pension Protection Act of 2006, provide rules for supporting organizations that are operated “in connection with” their supported organization(s) (called “Type III supporting organizations”). These final regulations specify the information that Type III supporting organizations are required to provide their supported organizations. The final regulations also provided the criteria that Type III supporting organizations must satisfy in order to qualify as “functionally integrated.” For those Type III supporting organizations that do not qualify as functionally integrated, the temporary regulations require an annual payout of the greater of 3.5 percent of the fair market value of non-exempt-use assets or 85 percent of adjusted net income.

TAX CONVENTIONS

Announcement 2013-14, page 651.

The following is a copy of the Competent Authority Agreement (“the Agreement”) released to the public on January 31, 2013, by the Competent Authorities of the United States and Norway regarding the eligibility of entities that are treated as fiscally transparent under the laws of either Contracting State to benefit under the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, signed on December 3, 1971, and as amended by the Protocol signed on September 19, 1980 (the “Treaty”).

ADMINISTRATIVE

Announcement 2013-12, page 651.

Eliminating printing on paper of the Internal Revenue Bulletin. The IRS is no longer printing paper copies of the Internal Revenue Bulletin (IRB), which the IRS distributed directly to certain stakeholders. Also, the IRS will not create the Cumulative Bulletin (CB) after the 2008-2 edition.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and en-

force the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered,

and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 304.—Redemption Through Use of Related Corporations

26 CFR 1.304-4: *Special rules for the use of related corporations to avoid the application of section 304.*

T.D. 9606

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Use of Controlled Corporations to Avoid the Application of Section 304

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations addressing sales of stock between related corporations. The regulations finalize proposed regulations and remove temporary regulations that apply to certain sales of stock that are recharacterized as contributions and redemptions, but that are structured with a principal purpose of redesignating the issuing corporation or the acquiring corporation. The regulations affect persons treated as receiving distributions in redemption of stock as a result of such transactions.

DATES: *Effective Date:* These regulations are effective on December 24, 2012.

Applicability Date: These regulations apply to acquisitions of stock occurring on or after December 29, 2009.

FOR FURTHER INFORMATION CONTACT: Ryan A. Bowen, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2009, the IRS and the Treasury Department published final and temporary regulations and a notice of proposed rulemaking by cross-reference to temporary regulations in the **Federal Register** (74 FR 69021, T.D. 9477, 2010-6 I.R.B. 385; REG-132232-08, 2010-6 I.R.B. 401 [74 FR 69043]) (2009 regulations) under section 304. A correction to the 2009 regulations was published in the **Federal Register** on February 26, 2010 (75 FR 8796). The 2009 regulations amended the anti-abuse rule of §1.304-4T, which was published in the **Federal Register** on June 14, 1988 (T.D. 8209, 1988-2 C.B. 174), to address transactions that are subject to section 304 but are structured with a principal purpose of avoiding the application of section 304 to certain corporations. No public hearing on the 2009 regulations was requested or held, and no written comments were received. Accordingly, this Treasury decision adopts the 2009 regulations without change as final regulations and removes the temporary regulations under section 304.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. Chapter 6) do not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. Chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. These regulations primarily will affect large corpora-

tions. Thus, the number of affected small entities will not be substantial. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

The principal author of the regulations is Ryan A. Bowen of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

Par. 2. Section 1.304-4 is revised to read as follows:

§1.304-4 Special rules for the use of related corporations to avoid the application of section 304.

(a) *Scope and purpose.* This section applies to determine the amount of a property distribution constituting a dividend (and the source thereof) under section 304(b)(2), for certain transactions involving controlled corporations. The purpose of this section is to prevent the avoidance of the application of section 304 to a controlled corporation.

(b) *Amount and source of dividend.* For purposes of determining the amount constituting a dividend (and source thereof) under section 304(b)(2), the following rules shall apply:

(1) *Deemed acquiring corporation.* A corporation (deemed acquiring corporation) shall be treated as acquiring for

property the stock of a corporation (issuing corporation) acquired for property by another corporation (acquiring corporation) that is controlled by the deemed acquiring corporation, if a principal purpose for creating, organizing, or funding the acquiring corporation by any means (including through capital contributions or debt) is to avoid the application of section 304 to the deemed acquiring corporation. See paragraph (c) *Example 1* of this section for an illustration of this paragraph.

(2) *Deemed issuing corporation.* The acquiring corporation shall be treated as acquiring for property the stock of a corporation (deemed issuing corporation) controlled by the issuing corporation if, in connection with the acquisition for property of stock of the issuing corporation by the acquiring corporation, the issuing corporation acquired stock of the deemed issuing corporation with a principal purpose of avoiding the application of section 304 to the deemed issuing corporation. See paragraph (c) *Example 2* of this section for an illustration of this paragraph.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. CFC1 is organized in Country X, which imposes a high rate of tax on the income of CFC1. P also wholly owns CFC2, a controlled foreign corporation with accumulated earnings and profits of \$200x. CFC2 is organized in Country Y, which imposes a low rate of tax on the income of CFC2. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid the dividend distribution from CFC2 to P that would result if CFC2 were the acquiring corporation, P causes CFC2 to form CFC3 in Country X and to contribute \$100x to CFC3. CFC3 then acquires all of the stock of CFC1 from P for \$100x.

(ii) *Result.* Because a principal purpose for creating, organizing, or funding CFC3 (acquiring corporation) is to avoid the application of section 304 to CFC2 (deemed acquiring corporation), under paragraph (b)(1) of this section, for purposes of determining the amount of the \$100x distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 shall be treated as acquiring the stock of CFC1 (issuing corporation) from P for \$100x. As a result, P receives a \$100x distribution out of the earnings and profits of CFC2 to which section 301(c)(1) applies.

Example 2. (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. The CFC1 stock has a basis of \$100x. CFC1 is organized in Country X. P also wholly owns CFC2, a

controlled foreign corporation with zero accumulated earnings and profits. CFC2 is organized in Country Y. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid a dividend distribution from CFC1 to P, P forms a new corporation (CFC3) in Country X and transfers the stock of CFC1 to CFC3 in exchange for CFC3 stock. P then transfers the stock of CFC3 to CFC2 in exchange for \$100x.

(ii) *Result.* Because a principal purpose for the transfer of the stock of CFC1 (deemed issuing corporation) by P to CFC3 (issuing corporation) is to avoid the application of section 304 to CFC1, under paragraph (b)(2) of this section, for purposes of determining the amount of the \$100x distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 (acquiring corporation) shall be treated as acquiring the stock of CFC1 from P for \$100x. As a result, P receives a \$100x distribution out of the earnings and profits of CFC1 to which section 301(c)(1) applies.

(d) *Effective/applicability date.* This section applies to acquisitions of stock occurring on or after December 29, 2009.

§1.304-4T [Removed]

Par. 3. Section 1.304-4T is removed.

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

Approved December 12, 2012.

Mark J. Mazur,
*Assistant Secretary
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on December 21, 2012, 8:45 a.m., and published in the issue of the Federal Register for December 26, 2012, 77 F.R. 75844)

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 509.—Private Foundation Defined

26 CFR 1.509(a)-4: Supporting organizations.

T.D. 9605

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains both final regulations and temporary regulations regarding the requirements to qualify

as a Type III supporting organization that is operated in connection with one or more supported organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type III supporting organizations and their supported organizations. The text of the temporary regulations also serves as the text of the proposed regulations (REG-155929-06) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on December 28, 2012.

FOR FURTHER INFORMATION CONTACT: Preston J. Quesenberry at (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in the final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2157. The collection of information in the final regulations is in §1.509(a)-4(i)(2) and §1.509(a)-4(i)(6)(v). The collection of information under §1.509(a)-4(i)(2) flows from section 509(f)(1)(A) of the Internal Revenue Code (Code), which requires a Type III supporting organization to provide to each of its supported organizations such information as the Secretary may require to ensure that the Type III supporting organization is responsive to the needs or demands of its supported organization(s). The collection of information under §1.509(a)-4(i)(6)(v) is required only if a Type III supporting organization that is not functionally integrated wishes for certain amounts set aside for a specific project to count toward the distribution requirement imposed by §1.509(a)-4(i)(5)(ii). The likely recordkeepers are Type III supporting organizations and certain of their supported organizations.

Estimated total annual reporting burden: 15,122 hours.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated number of recordkeepers: 7,556.

Estimated frequency of collection of such information: Annual.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and Foundation Excise Tax Regulations (26 CFR part 53) regarding organizations described in section 509(a)(3) of the Code. An organization described in section 501(c)(3) of the Code is classified as either a private foundation or a public charity. To be classified as a public charity, an organization must meet the requirements of section 509(a)(1), (2), (3), or (4). Organizations described in section 509(a)(3) are known as supporting organizations. Supporting organizations achieve their public charity status by providing support to one or more organizations described in section 509(a)(1) or (2), which in this context are referred to as supported organizations.

To meet the requirements of section 509(a)(3), an organization must satisfy an organizational test, an operational test, a relationship test, and a disqualified person control test. The organizational and operational tests require that the supporting organization be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more supported organizations. The relationship test requires the supporting organization to establish one of three types of relationships with one or more supported organizations. Finally, the disqualified person control test requires that the supporting organization not be controlled directly or indirectly by certain disqualified persons. Although each of these tests is a necessary requirement for an organization to establish that it qualifies as a supporting organization, these final regulations and temporary reg-

ulations focus primarily on one of the relationship tests: the test for supporting organizations that are “operated in connection with” their supported organization(s), otherwise known as “Type III” supporting organizations. Specifically, the temporary regulations address the amount that Type III supporting organizations that are not “functionally integrated” must annually distribute and explain how assets are valued for purposes of this distribution requirement. The final regulations describe all of the other requirements of the relationship test for Type III supporting organizations.

1. Three Types of Supporting Organizations

To meet the requirements of section 509(a)(3), a supporting organization must satisfy one of three relationship tests with respect to its supported organization(s). A supporting organization that is operated, supervised or controlled by one or more supported organizations is commonly known as a Type I supporting organization. The relationship of a Type I supporting organization with its supported organization(s) is comparable to that of a corporate parent-subsidiary relationship. A supporting organization that is supervised or controlled in connection with one or more supported organizations is commonly known as a Type II supporting organization. The relationship of a Type II supporting organization with its supported organization(s) involves common supervision or control by the persons supervising or controlling both the supporting organization and the supported organizations. A supporting organization that is operated in connection with one or more supported organizations is commonly known as a Type III supporting organization.

2. Qualification Requirements for Type III Supporting Organizations Prior to Enactment of the Pension Protection Act of 2006

Prior to the enactment of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780 (2006)) (PPA), the regulations under section 509(a)(3) (hereinafter referred to as the “existing” regulations) generally provided that an organization is “operated in connection

with” one or more supported organizations if it meets a “responsiveness test” and an “integral part test.”

a. *Responsiveness test*

Existing §1.509(a)–4(i)(2)(i) provides that an organization meets the responsiveness test if the organization is responsive to the needs or demands of its supported organizations. Existing §1.509(a)–4(i)(2)(ii) (hereinafter referred to as the “significant voice responsiveness test”) provides that a supporting organization can demonstrate responsiveness to a supported organization if the relationship between the supporting and supported organization meets one of the following three criteria: (1) the supported organization appoints or elects one or more of the officers, directors, or trustees of the supporting organization; (2) one or more members of the governing body of the supported organization serve as officers, directors, or trustees of, or hold other important offices in, the supporting organization; or (3) the officers, directors, or trustees of the supporting organization maintain a close continuous working relationship with the officers, directors, or trustees of the supported organization. In addition, as a result of one of these three criteria being satisfied, the supported organization has to have a “significant voice” in the investment policies of the supporting organization, the timing and the manner of making grants, the selection of the grant recipients of the supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

The existing regulations also provide an alternative means for charitable trusts to satisfy the responsiveness test. Under existing §1.509(a)–4(i)(2)(iii), a supporting organization is responsive if: (1) it is a charitable trust under State law; (2) each specified supported organization is a named beneficiary under the charitable trust’s governing instrument; and (3) each beneficiary organization has the power to enforce the trust and compel an accounting under State law.

In the case of an organization that is supporting one or more supported organizations before November 20, 1970, existing §1.509(a)–4(i)(1)(ii) provides that additional facts and circumstances, such as a historic and continuing relationship

between the supporting organization and its supported organization(s), also can be taken into account to establish compliance with the responsiveness test.

b. *Integral part test*

The integral part test under existing §1.509(a)–4(i)(3)(i) requires a supporting organization to maintain a significant involvement in the operations of one or more supported organizations that are dependent upon the supporting organization for the type of support that it provides. Under the existing regulations, there are two alternative ways to meet the integral part test: (1) the “but for” test under existing §1.509(a)–4(i)(3)(ii); or (2) the payout test under existing §1.509(a)–4(i)(3)(iii).

Under existing §1.509(a)–4(i)(3)(ii), the “but for” test is satisfied if the activities engaged in by the supporting organization for or on behalf of the supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the supported organizations themselves.

The payout test under existing §1.509(a)–4(i)(3)(iii) requires a supporting organization to: (1) make payments of substantially all of its income to or for the use of one or more supported organizations; (2) provide enough support to one or more supported organizations to ensure the attentiveness of such organization(s) to the operations of the supporting organization; and (3) pay a substantial amount of the total support of the supporting organization to those supported organizations that meet the attentiveness requirement. The phrase “substantially all of its income” in existing §1.509(a)–4(i)(3)(iii) has been interpreted to mean at least 85 percent of adjusted net income. See Rev. Rul. 76–208, 1976–1 C.B. 161.

3. *PPA Changes to Qualification Requirements for Type III Supporting Organizations*

The PPA made five changes to the requirements an organization must meet to qualify as a Type III supporting organization:

(1) It removed the ability to rely solely on the alternative test for charitable trusts

as a means of meeting the responsiveness test;

(2) To ensure that a “significant amount” is paid to supported organizations, it directed the Secretary of the Treasury to establish a new payout requirement for Type III supporting organizations that are not “functionally integrated” (with the term “functionally integrated” referring to Type III supporting organizations that are not required to meet a payout requirement due to their activities related to performing the functions of, or carrying out the purposes of, their supported organization(s));

(3) It required a Type III supporting organization to annually provide to each of its supported organizations such information as the Secretary may require to ensure that the supporting organization is responsive to the needs or demands of its supported organization(s);

(4) It prohibited a Type III supporting organization from supporting any supported organization not organized in the United States; and

(5) It prohibited a Type I or Type III supporting organization from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization.

4. *Advanced Notice of Proposed Rulemaking*

On August 2, 2007, the Treasury Department and the IRS published in the **Federal Register** (72 FR 42335) an advanced notice of proposed rulemaking (ANPRM) (REG–155929–06). The ANPRM described proposed rules to implement the PPA changes to the Type III supporting organization requirements and solicited comments regarding those proposed rules. Forty comments were received in response to the ANPRM and were considered in drafting the notice of proposed rulemaking and these final and temporary regulations. No public hearing was requested or held.

5. *Notice of Proposed Rulemaking*

On September 24, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 48672) a notice of proposed rulemaking (NPRM)

(REG-155929-06). The NPRM contained proposed regulations (the “2009 proposed regulations”) setting forth the requirements to qualify as a Type III supporting organization under the PPA. The IRS received more than 30 comments in response to the NPRM. These comments were considered in drafting these final and temporary regulations and are available for public inspection at www.regulations.gov or upon request. No public hearing was requested or held.

After reviewing all comments received, the Treasury Department and the IRS believe that certain topics require further consideration. The Treasury Department and the IRS will continue to study these topics and will request comments on these topics in a separate notice of proposed rulemaking. Nonetheless, the Treasury Department and the IRS believe that immediate effective guidance is needed for Type III supporting organizations. Accordingly, the Treasury Department and the IRS are issuing both final regulations and temporary regulations. The provisions in the 2009 proposed regulations regarding the amount that non-functionally integrated Type III supporting organizations must annually distribute have been significantly revised in response to comments. As a result, these provisions (as well as provisions related to how assets are valued for purposes of this distribution requirement) are being issued as temporary and proposed regulations, to permit additional opportunity for comment. The other provisions of the 2009 proposed regulations are being issued as final regulations, which are substantially similar to the 2009 proposed regulations but reflect certain revisions that were made based on comments received. The comments and revisions are discussed in the following section.

Explanation of Provisions and Summary of Comments

Based largely on comments received from commenters, the final and temporary regulations make revisions to various provisions in the 2009 proposed regulations, including (1) the definition of “supported organization” in §1.509(a)–4(a)(6); (2) the prohibition on receiving gifts or contributions from persons that control the governing body of a supported organi-

zation set forth in §1.509(a)–4(f)(5); (3) the notification requirement set forth in §1.509(a)–4(i)(2); (4) the responsiveness test set forth in §1.509(a)–4(i)(3); (5) the requirements to qualify as a functionally integrated Type III supporting organization set forth in §1.509(a)–4(i)(4); (6) the requirements to qualify as a non-functionally integrated (NFI) Type III supporting organization set forth in §1.509(a)–4(i)(5); and (7) the transition rules provided in §1.509(a)–4(i)(11).

1. Definition of Supported Organization

Section 1.509(a)–4(a)(5) defines a “publicly supported organization” as “an organization described in section 509(a)(1) or (2).” This defined term is used throughout §1.509(a)–4. The 2009 proposed regulations proposed removing the term “publicly supported organization” wherever it appears in §1.509(a)–4 and replacing it with a new defined term, “supported organization.” The new defined term “supported organization” was narrower than the term “publicly supported organization” because it was limited to those organizations described in section 509(a)(1) or (2) that the supporting organization was organized and operated to support. As a result, the new defined term does not necessarily work in every instance in §1.509(a)–4 in which the term “publicly supported organization” is used. Accordingly, the final regulations maintain the term “publicly supported organization” and continue to use it in every paragraph of §1.509(a)–4 other than §1.509(a)–4(i).

The final regulations also revise the definition of “supported organization” in the 2009 proposed regulations and apply the term only in newly amended §1.509(a)–4(i). While the definition of supported organization provided in the 2009 proposed regulations tracked the language of section 509(f)(3), the final regulations clarify the definition of supported organization by cross-referencing the previously-existing §1.509(a)–4(d)(4) and §1.509(a)–4(d)(2)(iv). Thus, for purposes of §1.509(a)–4(i), a supported organization of a Type III supporting organization is defined as any publicly supported organization designated by name in the supporting organization’s articles of organization. In addition, a supported organization of a Type III supporting organization can

include a publicly supported organization that is not designated by name in the supporting organization’s articles if there has been a historic and continuing relationship between the supporting organization and the publicly supported organization and, by reason of such relationship, there has developed a substantial identity of interests between such organizations.

2. Gifts from Controlling Donors

Like the 2009 proposed regulations, the final regulations prohibit a Type I or Type III supporting organization from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization, or from persons related to a person possessing such control. For these purposes, related persons include family members and 35-percent controlled entities within the meaning of section 4958(f).

One commenter requested a definition of “control” for purposes of this provision. The Treasury Department and the IRS agree that a definition of “control” for these purposes would be beneficial and intend to issue proposed regulations in the near future that will provide such a definition.

3. Requirement to Notify Supported Organizations

Like the 2009 proposed regulations, these final regulations require that, for each taxable year, a Type III supporting organization must provide to each of its supported organizations: (1) a written notice addressed to a principal officer of the supported organization describing the amount and type of support provided to the supported organization; (2) a copy of the supporting organization’s most recently filed Form 990, “*Return of Organization Exempt from Income Tax*,” or other annual information return required to be filed under section 6033; and (3) a copy of the supporting organization’s governing documents, including any amendments. The required notification documents must be postmarked or electronically transmitted by the last day of the fifth calendar month following the close of the supporting organization’s taxable year.

Several commenters suggested that the due date for the required notification be amended to correspond to the Form 990 due date, with extensions. Alternatively, some commenters requested clarification that the “most recently filed Form 990” can be a Form 990 filed in a prior year.

The Form 990 is due by the 15th day of the fifth calendar month following the close of the filing organization’s taxable year. However, an organization required to file a Form 990 can request two three-month extensions (the first of which is granted automatically) by filing a Form 8868, “*Application for Extension of Time to File an Exempt Organization Return*.” As a result, if the due date for the required notification were the same as the Form 990 due date, with extensions, a supported organization might not receive its notification from a supporting organization until almost a year after the close of the supporting organization’s preceding taxable year. In such cases, a supported organization would have little or no opportunity to use the information in the notification to make recommendations regarding the amount and type of support it wishes to receive from the supporting organization during the taxable year it receives the notification. In addition, if the due date for the notification were the same as the due date for the Form 990, with extensions, a supported organization would not know when to expect or request a notification from a supporting organization unless it knew whether or not a supporting organization requested extensions in any given year. For these reasons, the final regulations retain the due date of the last day of the fifth calendar month following the close of the supporting organization’s taxable year.

However, the Treasury Department and the IRS agree with commenters that if an organization has not filed a Form 990 for a taxable year by the last day of the fifth calendar month following the close of the taxable year (because, for example, it has received an extension), the organization’s “most recently filed” Form 990 as of that last day of the fifth calendar month is the Form 990 for the supporting organization’s immediately preceding taxable year. As a result, the final regulations clarify the relationship between the filing date of the Form 990 and the date notification is provided by referring to the Form 990 “that

was most recently filed as of the date the notification is provided” rather than simply the “most recently filed Form 990.” Thus, for example, if a Type III supporting organization reporting on a calendar year basis has not filed its 2013 Form 990 by May 31, 2014, because it requested an extension, it can satisfy the Form 990 portion of its notification requirement for 2013 (which it needs to meet by May 31, 2014) by providing a copy of the 2012 Form 990 that it filed in 2013.

In addition, the Treasury Department and the IRS recognize that some Type III supporting organizations that request extensions to file their Forms 990 may need additional time to prepare their first notification. As a result, as described further in section 8.a. of this preamble, the final regulations provide transition relief for supporting organizations in existence on the effective date of these final and temporary regulations under which the due date for a Type III supporting organization’s first required notification is the later of the last day of the fifth calendar month following the close of the supporting organization’s taxable year or the due date for the Form 990 for that taxable year, including extensions.

One commenter requested clarification that the required written notice must describe the amount and type of support the supporting organization provided to the supported organization in the supporting organization’s “immediately preceding taxable year,” rather than “in the past year,” as provided in the 2009 proposed regulations. The final regulations clarify that the written notice must describe the support provided in the supporting organization’s taxable year ending immediately before the taxable year in which the written notice is provided. Thus, for example, if a Type III supporting organization operating on a calendar year provided the required notification for 2013 on May 31, 2014, the written notice would describe the support the supporting organization provided in 2013.

Another commenter stated that the term “principal officer” as used in the 2009 proposed regulations is ambiguous and requested that the regulations expressly designate the treasurer or chief financial officer (CFO) as the principal officer to whom notification should be given. The final regulations make clear that a person who, re-

gardless of title, has ultimate responsibility for managing the finances of a supported organization (which could include a CFO or treasurer) can be a principal officer of that organization for purposes of the notification requirement. In addition, the final regulations provide that a principal officer can include a person who, regardless of title, has ultimate responsibility for implementing the decisions of the supported organization’s governing body or for supervising the management, administration, or operation of the supported organization.

One commenter recommended that a supporting organization be permitted to send the required written notice to the supported organization’s general address rather than to its principal officer. The Treasury Department and the IRS have concluded that the notification should be sent to a principal officer of the supported organization to ensure receipt by a person with sufficient responsibility over the organization. Accordingly, the final and temporary regulations do not adopt this comment.

The same commenter asked that supporting organizations be allowed to satisfy the notification requirement by sending supported organizations an internet link to the Form 990. Like the 2009 proposed regulations, the final regulations provide that the notification requirement may be satisfied by electronic media, which can include a working internet link. However, because all components of the notification requirement must be satisfied, providing only an internet link to the Form 990 would not be sufficient.

One commenter recommended that a Type III supporting organization that is included in a group exemption and supports not only the central organization in the group exemption but also the other subordinate organizations that are part of the group exemption should only be required to provide notice to the central organization, not to all of the other subordinate organizations. Another commenter stated that notification is unnecessary if the principal officer of the supported organization is also the principal officer of the supporting organization. Because section 509(f)(1)(A) of the Code provides that Type III supporting organizations must provide the required notification “to each supported organization,” the Treasury Department and the IRS have concluded that

a Type III supporting organization must provide notice to all of the organizations it is organized to support. Accordingly, the final and temporary regulations do not adopt these comments.

Finally, because section 6104(d)(3)(A) of the Code and §301.6104(d)-1(b)(4)(ii) except the name and address of contributors from the general requirement that tax-exempt organizations disclose their annual information returns, the final regulations clarify that a supporting organization may redact the name and address of any contributor to the organization from the Form 990 (or other annual information return) it is required to provide to the supported organization(s) as part of the notification requirement.

4. Responsiveness Test

Like the 2009 proposed regulations, in implementing section 1241(c) of the PPA, the final regulations remove the alternative responsiveness test for charitable trusts contained in existing §1.509(a)-4(i)(2)(iii). Accordingly, the final regulations provide that all Type III supporting organizations must satisfy the “significant voice” responsiveness test by (1) demonstrating one of three necessary relationships between their officers, directors, or trustees and those of their supported organization(s), and (2) showing that this relationship results in the officers, directors, or trustees of the supported organization having a significant voice in directing the use of the income and assets of the supporting organization.

Numerous commenters suggested that *Example 1* of §1.509(a)-4(i)(3)(iv) of the 2009 proposed regulations, which illustrates how a charitable trust may satisfy the significant voice responsiveness test, imposes too onerous of a requirement for meeting the responsiveness test by describing “quarterly face-to-face meetings” between a bank trustee’s representative and an officer of the supported organization. However, *Example 1* does not impose specific requirements on charitable trusts seeking to satisfy the responsiveness test; rather, the example merely illustrates one way the officers, directors, or trustees of a supported organization could maintain a close and continuous relationship with the officers, directors, or trustees of a supporting organization organized as a trust and

thereby have a significant voice in directing the use of the income or assets of that supporting organization. In order to better illustrate options for satisfying the significant voice responsiveness test, *Example 1* has been amended in the final regulations to refer to “quarterly face-to-face or telephonic meetings” rather than only face-to-face meetings. As a general matter, the Treasury Department and the IRS anticipate that charitable trusts will be able to demonstrate that they satisfy the responsiveness test in a variety of ways, and whether a supported organization has a close and continuous relationship with, or a significant voice in directing the use of the income or assets of, a supporting organization will be determined based on all the relevant facts and circumstances.

A few commenters requested additional examples of how Type III supporting organizations can satisfy the responsiveness test. The final and temporary regulations do not provide any such additional examples, but these comments will continue to be considered. The Treasury Department and the IRS intend to issue proposed regulations in the near future that amend the responsiveness test by clarifying that Type III supporting organizations must be responsive to all of their supported organizations. In the preamble to those proposed regulations, the Treasury Department and the IRS intend to request additional comments regarding examples of how to satisfy the responsiveness test.

Several commenters requested clarification that the responsiveness test does not require a supporting organization to follow all of the directions or recommendations of a supported organization’s officers, directors, or trustees and that the latter’s role can be only advisory. The Treasury Department and the IRS have concluded that the term “significant voice” makes clear that the responsiveness test requires only that the officers, directors, or trustees of a supported organization have the ability to influence the supporting organization’s decisions regarding the supporting organization’s use of its income or assets — not that the officers, directors, or trustees of the supported organization have control over such decisions.

One commenter noted that some trust instruments specify the recipients, timing, manner, and amount of grants and requested that the regulations provide that a

supported organization can still be deemed to have a significant voice over these matters if its supporting organization has such a governing instrument. The Treasury Department and the IRS are continuing to consider the best approach for supporting organizations with such trust instruments and intend to issue proposed regulations in the near future that will provide further clarification on this issue.

Finally, the 2009 proposed regulations stated that a supporting organization is responsive to the needs or demands of a supported organization if it satisfies the requirements of §1.509(a)-4(i)(3)(ii) and (iii). In order to conform more closely to existing §1.509(a)-4(i)(2)(i), the final regulations amend this language to state that a supporting organization must satisfy the requirements of §1.509(a)-4(i)(3)(ii) and (iii) in order to satisfy the responsiveness test.

5. Integral Part Test – Functionally Integrated Type III Supporting Organizations

Like the 2009 proposed regulations, the final regulations provide that a Type III supporting organization is functionally integrated, and thus not subject to a distribution requirement, if it either: (1) engages in activities substantially all of which directly further the exempt purposes of the supported organization(s) to which it is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s) and which, but for the involvement of the supporting organization, would normally be engaged in by the supported organization(s); or (2) is the parent of each of its supported organizations. In addition, the final regulations reserve a provision for a special rule for supporting organizations that support a governmental supported organization.

a. Substantially all activities directly further the exempt purposes of supported organizations

With respect to the test to qualify as functionally integrated by engaging in activities substantially all of which directly further the exempt purposes of the supported organization(s), one commenter recommended that the term “directly further the exempt purposes” be

defined with reference to the phrase “directly for the active conduct of activities constituting” the exempt purposes, as used in the definition of a private operating foundation under section 4942(j)(3) and the accompanying regulations at §53.4942(b)–1(b)(1). The same commenter noted that §53.4942(b)–1(b)(2) treats certain grants, scholarships, or other payments made or awarded by a private operating foundation to individual beneficiaries as qualifying distributions made directly for the active conduct of exempt activities as long as those payments are to support active programs in which the operating foundation maintains significant involvement. This commenter recommended that similar grants, scholarships, or other payments made or awarded by Type III supporting organizations should be treated as activities that directly further the exempt purposes of a supported organization (“direct furtherance activities”).

The Treasury Department and the IRS agree that the meaning of the phrase “directly further the exempt purposes,” as used in the functionally integrated test, is similar to the meaning of the phrase “directly for the active conduct of activities constituting” the exempt purposes, as used in the definition of a private operating foundation and as described in detail in §53.4942(b)–1(b)(1). Consequently, in defining direct furtherance activities, the final regulations use language similar to that used in §53.4942(b)–1(b)(1) by clarifying that direct furtherance activities are activities conducted by the supporting organization itself, rather than by a supported organization. However, most of the remaining language in §53.4942(b)–1(b)(1) used to define “directly for the active conduct of activities” is not used in the definition of direct furtherance activities in the final regulations because the former definition is based only on expenditures while the latter concept is based more broadly on the activities of a Type III supporting organization. As a result, the definition of direct furtherance activities in the final regulations is otherwise the same as the definition contained in the 2009 proposed regulations.

The final regulations also provide that certain payments to individual beneficiaries similar to those that would qualify as “directly for the active conduct of activities constituting” a private operat-

ing foundation’s exempt purposes under §53.4942(b)–1(b)(2) will be treated as direct furtherance activities under the Type III supporting organization functionally integrated test. Similar to the payments to individual beneficiaries described in §53.4942(b)–1(b)(2), the final regulations provide that making or awarding grants, scholarships, or other payments to individual beneficiaries will be treated as an activity that directly furthers the exempt purposes of a supported organization only if the making or awarding of such payments is part of an active program of the supporting organization that directly furthers the exempt purposes of the supported organization(s) and in which the supporting organization maintains significant involvement (as defined in §53.4942(b)–1(b)(2)(ii)). However, unlike distributions directly for the active conduct of activities constituting a private operating foundation’s exempt purposes, the direct furtherance activities of a functionally integrated Type III supporting organization must directly further the exempt purposes of one or more supported organizations. As a result, the final regulations impose three additional requirements that a supporting organization’s grants, scholarships, or other payments to individual beneficiaries must satisfy in order to be considered direct furtherance activities. First, the individual beneficiaries must be members of the charitable class benefitted by a supported organization. Second, the officers, directors, or trustees of that supported organization must have a significant voice in the timing of the payments, the manner of making them, and the selection of recipients. Third, the individual beneficiaries must be selected on an objective and nondiscriminatory basis (as described in §53.4945–4(b)).

A number of commenters suggested that fundraising, making grants, and investing and managing non-exempt-use assets should be considered direct furtherance activities in certain situations, including those in which the supported organization (1) is a community foundation or other publicly-supported grantmaker, (2) is a religiously-affiliated entity, (3) has a close historic and continuing relationship with the supporting organization, or (4) created the supporting organization specifically to house fundraising, grantmaking, and/or investment activities. One

commenter further suggested that a Type III supporting organization’s fundraising, grantmaking, and/or investment and management of non-exempt-use assets should be treated as direct furtherance activities as long as a “preponderance” of the supporting organization’s other activities otherwise directly further the supported organization’s exempt purposes. Another commenter recommended that the regulations include an exception that would treat a supporting organization as functionally integrated (or otherwise not subject to a distribution requirement) even if it engaged in grantmaking and the production of investment income as more than an insubstantial part of its activities as long as it (1) has not received any contribution from its founder or family members since 1970, (2) has no substantial contributor (or family member thereof) who is alive, and (3) has already distributed to its supported organization(s), in the aggregate, an amount equal to the amount of its donor contributions.

The Treasury Department and the IRS have determined that a Type III supporting organization should qualify as functionally integrated, and therefore not be subject to the payout requirement, if substantially all of its support for its supported organization(s) consists of charitable activities that the supporting organization itself directly carries out (as distinguished from charitable activities carried out by the supported organization(s) that the supporting organization helps finance by producing and distributing income). This is because a supporting organization that operates substantial, direct charitable programs itself may need more flexibility in structuring its annual operational budget than the annual payout requirement for NFI Type III supporting organizations would allow. The examples of activities that commenters want to be treated as direct furtherance activities or to otherwise qualify them for an exception from the distribution requirement — all of which involve producing income and distributing a portion of it to the supported organization — are not consistent with this rationale and hence the Treasury Department and the IRS do not adopt these comments.

Commenters also requested additional guidance on how direct furtherance activities will be measured for purposes of determining whether they constitute “sub-

stantially all” of a supporting organization’s activities. A number of commenters suggested that all facts and circumstances should be considered in making this determination, including not only the supporting organization’s expenditures but also, for example, the time and effort spent by the organization’s employees and volunteers. The final regulations clarify that all pertinent facts and circumstances are considered in measuring activities for purposes of determining whether substantially all of an organization’s activities are direct furtherance activities.

One commenter stated that the example in the 2009 proposed regulations of a supporting organization that qualifies as a functionally integrated Type III supporting organization by performing publishing and printing functions for churches was not “realistic” because several churches would be unlikely to jointly establish such a publishing operation. Instead of a publishing operation, this commenter suggested that churches would be more likely to jointly establish a charitable organization that performs a social welfare function. As a result, the final regulations replace the example of a nonprofit publishing organization with an example of a nonprofit food pantry.

b. Being the parent of each supported organization

Like the 2009 proposed regulations, the final regulations provide that a Type III supporting organization can qualify as functionally integrated by being the parent of each supported organization. In defining “parent” for these purposes, the final regulations repeat the definition set forth in the 2009 proposed regulations and state that a supporting organization is the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization, and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers of the supporting organization acting in their official capacity. However, the Treasury Department and the IRS have determined that this definition of “parent” is insufficiently specific. Consequently, the Treasury Department

and the IRS intend to issue proposed regulations in the near future that will provide a new definition of parent that specifically addresses the power to remove and replace officers, directors, or trustees of the supported organization.

c. Supporting a governmental supported organization

The 2009 proposed regulations provided a “governmental entity exception” under which a Type III supporting organization that supports one supported organization whose assets are subject to the appropriations process of a federal, state, local, or Indian tribal government may treat grantmaking to the supported organization and investing and managing non-exempt-use assets on behalf of the supported organization as direct furtherance activities, as long as a substantial part of the supporting organization’s total activities are otherwise direct furtherance activities.

Several commenters requested that this governmental entity exception be expanded to allow supporting organizations to support more than one supported organization. For example, commenters recommended that a supporting organization be allowed to qualify for this exception if it supports (1) up to five governmental supported organizations; (2) not only a governmental entity but also other supported organizations that are responsive to, and have a substantial operational connection with, that governmental entity; or (3) a governmental system, such as a parent and subsidiary units.

The Treasury Department and the IRS are continuing to consider these comments regarding the governmental entity exception and intend to issue proposed regulations in the near future that will provide guidance on how supporting organizations can qualify as functionally integrated by supporting a governmental entity. These proposed regulations will also provide one or more examples of how a Type III supporting organization can qualify as functionally integrated by supporting a governmental entity (similar to the examples contained in the 2009 proposed regulations but omitted from these final and temporary regulations).

In the meantime, as discussed further in section 8.b. of this preamble, Type III sup-

porting organizations can qualify as functionally integrated by meeting the requirements of the “but for” test under existing §1.509(a)–4(i)(3)(ii) until the first day of their second taxable year beginning after December 28, 2012. The Treasury Department and the IRS intend to release the proposed regulations on the governmental entity rule sufficiently in advance of the beginning of this second taxable year to enable Type III SOs to determine their eligibility. The Treasury Department and the IRS also anticipate that, for taxable years beginning prior to the date of issuance of the future final regulations on the governmental entity rule, Type III SOs would be permitted to rely on the governmental entity rule as stated in either the future proposed or final regulations.

6. Integral Part Test – Non-Functionally Integrated Type III Supporting Organizations

a. Distribution requirement

The 2009 proposed regulations provided that a NFI Type III supporting organization would have to annually distribute a “distributable amount” equal to 5 percent of the fair market value of its non-exempt-use assets. The Treasury Department and the IRS decided to base this distribution requirement on non-exempt-use assets, rather than on income, due to concerns that the income-based payout test under existing §1.509(a)–4(i)(3)(iii) could result in little or nothing being paid to charity if the supporting organization’s assets produced little to no income.

Several commenters stated that the 5-percent payout rate in the 2009 proposed regulations would be too high and would erode a supporting organization’s assets over time on a real (inflation-adjusted) basis. A few commenters noted that private non-operating foundations must annually pay out 5 percent of their non-exempt-use assets under section 4942 of the Code but stated that NFI Type III supporting organizations should not be subject to the same payout rate as private non-operating foundations because they are distinguishable from these foundations. For example, some commenters noted that private non-operating foundations can fund any number of charitable organizations in a given year, while

Type III supporting organizations are obligated to benefit designated supported organizations and also must satisfy the responsiveness and attentiveness tests with respect to these supported organizations. Commenters also noted that substantial contributors to a supporting organization (as well as certain related persons) cannot control the supporting organization, while private foundations face no such restriction. Some of these commenters noted that lower effective payout requirements are imposed on private operating foundations and medical research organizations and recommended that similar payout requirements should apply to NFI Type III supporting organizations. Other commenters asked that the final regulations maintain the payout test under existing §1.509(a)–4(i)(3)(iii), which requires payments of substantially all of the supporting organization's income.

The Treasury Department and the IRS recognize that NFI Type III supporting organizations face a number of requirements and restrictions that do not apply to private foundations, including the organizational, operational, and disqualified person control tests under section 509(a)(3) and the responsiveness and attentiveness test under the regulations regarding Type III supporting organizations. These requirements and restrictions should significantly reduce the likelihood that substantial contributors to a NFI Type III supporting organization will be able to use the supporting organization's assets to further their own interests. These requirements also result in a relationship between the supporting organization and the supported organizations that does not necessarily exist between private foundations and their grantees.

As a result, the Treasury Department and the IRS have determined that an asset-based payout percentage lower than the payout percentage for private non-operating foundations is justified for NFI Type III supporting organizations. At the same time, the payout test under existing §1.509(a)–4(i)(3)(iii), which requires payments of substantially all of the supporting organization's income (with "substantially all" considered to mean 85 percent or more), has helped prevent unreasonable accumulations of income by NFI Type III supporting organizations that generate significant amounts of current income in

a particular taxable year. Accordingly, the temporary regulations require NFI Type III supporting organizations to annually distribute a "distributable amount" equal to the greater of 85 percent of adjusted net income or 3.5 percent of the fair market value of the supporting organization's non-exempt-use assets. For these purposes, "adjusted net income" is determined by applying the principles of section 4942(f) and §53.4942(a)–2(d). Because this distributable amount is significantly different than the distributable amount described in the 2009 proposed regulations, the Treasury Department and the IRS have issued the provisions describing the distributable amount as temporary and proposed regulations to provide an opportunity for comment.

In recommending an asset-based payout percentage of less than 5 percent, a number of commenters emphasized that supporting organizations have a relationship with their supported organizations that private foundations do not have with their grantees and that this relationship helps ensure responsiveness to the needs and demands of the supported organization. The Treasury Department and the IRS considered this relationship in determining the appropriate payout rate for NFI Type III supporting organizations. Accordingly, the Treasury Department and the IRS intend to ensure that this relationship exists between a supporting organization and each of its supported organizations by proposing regulations requiring that NFI Type III supporting organizations meet the responsiveness test with respect to each of their supported organizations.

Many commenters recommended that the distributable amount be based on the average fair market value of non-exempt-use assets over the three years (as opposed to just one year) preceding the year of the required distribution, in order to reduce fluctuations in payments to the supported organization(s) from year to year and avoid significant cuts to supported organizations' budgets during downward market fluctuations. The Treasury Department and the IRS expect that the new notification requirement and the application of the "significant voice" responsiveness test to all Type III supporting organizations, including those organized as trusts, will give supported organizations

the opportunity to influence the timing of payments. In addition, the Treasury Department and the IRS expect that the significantly lower payout percentage set forth in the temporary regulations should provide NFI Type III supporting organizations with additional flexibility to respond to requests from supported organizations to adjust the timing of payments to anticipate and respond to market fluctuations. Flexibility to respond to such requests from supported organizations is also made possible by the carryover rule that the final regulations adopt without change from the 2009 proposed regulations. This rule allows a Type III supporting organization that distributes more than its annual distributable amount during a taxable year to carry over that excess amount for five subsequent taxable years. Accordingly, the final and temporary regulations do not adopt the three-year valuation period suggested by commenters and, like the 2009 proposed regulations, provide that the distributable amount is based on the fair market value of the organization's non-exempt-use assets in the immediately preceding taxable year.

One commenter asked that the reasonable cause exception to the distribution requirement be expanded to expressly include times of great financial distress. Like the 2009 proposed regulations, the final regulations allow the Secretary to provide for a temporary reduction in the annual distributable amount in the case of a disaster or emergency, which the Treasury Department and the IRS intend to include a time of great financial distress. Thus, the final and temporary regulations do not make any changes to the reasonable cause exception.

b. Distributions that count toward the distribution requirement

A number of commenters recommended that a NFI Type III supporting organization should, like a private foundation, be able to count toward its distribution requirement amounts set aside for specific charitable projects that accomplish the exempt purposes of one or more supported organization(s). In response to this recommendation, the final regulations provide that a supporting organization may count a set-aside toward its distribution requirement if it establishes to the satisfac-

tion of the IRS, in a manner similar to that required of private foundations making set-asides under section 4942(g)(2)(B)(i) and the accompanying regulations, that the project is one that can be better accomplished by the set-aside than by the immediate payment of funds. In particular, the supporting organization must apply for IRS approval of the set-aside before the end of the taxable year in which the amount is set aside, establish to the satisfaction of the IRS that the amount set aside will be paid for the specific project within 60 months after it is set aside and that the project is one that can better be accomplished by the set-aside than by the immediate payment of funds, and meet the other approval and information requirements set forth in §53.4942(a)–3(b)(7)(i). The supporting organization must also obtain a written statement from the supported organization, signed by one of the supported organization's principal officers under penalty of perjury. This written statement must confirm that the specific project accomplishes the exempt purposes of the supported organization and that the supported organization approves the supporting organization's determination that the project is one that can be better accomplished by the set-aside than by the immediate payment of funds or distribution of assets. The final and temporary regulations do not incorporate a test similar to the "cash distribution test" for set-asides described in section 4942(g)(2)(B)(ii) and the accompanying regulations because such a test would not provide sufficient assurance that the project is one better accomplished by means of a set aside than by an immediate distribution to the supported organization.

A few commenters requested that the regulations clarify that a supporting organization will be able to count toward the distribution requirement expenditures on activities that directly further the exempt purposes of its supported organization(s). Accordingly, the final regulations provide that a NFI Type III supporting organization can count toward the distribution requirement amounts expended on activities that directly further the exempt purposes of the supported organization(s) to which the supporting organization is responsive and that, but for the involvement of the supporting organization, would normally be engaged in by the supported organi-

zation(s) (that is, that meet the requirements of §1.509(a)–4(i)(4)(i)(A)). However, in the case of such a direct furtherance activity that generates revenue for the supporting organization, the supporting organization can only count expenditures on that activity toward its distribution requirement to the extent the expenditures exceed the revenue derived. Thus, for example, if a NFI Type III supporting organization spent \$1 million in a taxable year operating a museum that generated \$800,000 in receipts for the supporting organization during that same year, the supporting organization could only count \$200,000 of the \$1 million spent toward the distribution requirement (assuming the operation of the museum was an activity described in §1.509(a)–4(i)(4)(i)(A)).

Like the 2009 proposed regulations, the final regulations provide that reasonable and necessary administrative expenses also count toward the distribution requirement. The final regulations clarify, however, that such expenses must be paid to accomplish the exempt purposes of the supported organization(s) and thus do not include expenses incurred in the production of investment income. The list of distributions that count toward the distribution requirement contained in §1.509(a)–4(i)(6) is not an exhaustive list and other distributions may count toward the distribution requirement. The Treasury Department and the IRS intend to propose regulations in the near future that will more fully describe the expenditures (including expenditures for administrative and additional charitable activities) that do and do not count toward the distribution requirement.

One commenter recommended that §1.509(a)–4(i)(6)(i) of the 2009 proposed regulations be revised to conform to §1.509(a)–4(i)(5)(ii) of the 2009 proposed regulations by providing that distributions made "for the use of" one or more supported organizations, as well as "to" one or more supported organizations, can count toward satisfying the distribution requirement. The commenter stated that such a conforming provision would clarify that supporting organizations have the flexibility to make payments to third parties directly "on behalf of" supported organizations. The Treasury Department and the IRS do not agree that the term "for the use of" is synonymous with "on behalf of"

or that it permits grants to organizations other than the supported organizations to count toward the distribution requirement. Accordingly, the final and temporary regulations do not adopt this comment.

Several commenters recommended that program-related investments (PRIs), which count toward satisfying a private foundation's distribution requirement under section 4942, should count toward the distribution requirement of NFI Type III supporting organizations. One commenter further recommended that the value of a PRI be excluded in calculating a supporting organization's distributable amount for a taxable year. These final and temporary regulations do not specifically address whether or not PRIs may count toward the distribution requirement for NFI Type III supporting organizations or be excluded in calculating a supporting organization's distributable amount for a taxable year. The Treasury Department and IRS are continuing to consider these comments and intend to provide further clarification in future proposed regulations.

c. Attentiveness requirement

Like the 2009 proposed regulations, the final regulations modify the attentiveness requirement in existing §1.509(a)–4(i)(3)(iii) to provide that an organization must distribute one-third or more of its required, annual distributable amount to one or more supported organizations that are attentive to the supporting organization and with respect to which the supporting organization meets the responsiveness test. Also like the 2009 proposed regulations, the final regulations provide that, to demonstrate that a supported organization is attentive, a supporting organization must: (1) provide 10 percent or more of the supported organization's total support; (2) provide support that is necessary to avoid the interruption of the carrying on of a particular function or activity of the supported organization; or (3) provide an amount of support that, based on "all pertinent factors," is a sufficient part of a supported organization's total support. For purposes of the second test listed above, support is considered necessary if the supporting organization or the supported organization earmarks the support for a particular program or activity of the supported organization, even if such

program or activity is not the supported organization's primary activity, as long as the program or activity is a substantial one.

One commenter suggested that the regulations clarify that, for purposes of determining whether a supporting organization provides 10 percent of a supported organization's total support, the supported organization's total support is its total support received in the immediately preceding taxable year. The final regulations adopt this comment.

Other commenters recommended changes to portions of the attentiveness test in the 2009 proposed regulations that are substantially identical to those in the existing regulations. The final and temporary regulations do not amend or supplement any of these portions of the attentiveness test, none of which were directly changed or affected by the PPA.

One commenter requested that the regulations include a safe harbor under which the attentiveness test would be automatically satisfied if a certain stated dollar amount of support (possibly indexed for inflation) were distributed to a supported organization. The final and temporary regulations do not adopt this suggestion because of the difficulty in identifying a specific dollar threshold that would be sufficient in all cases to ensure the supported organization's attentiveness.

Finally, one commenter requested guidance on how a supporting organization to a community foundation could satisfy the attentiveness test if it makes distributions to third-party organizations that fulfill the mission of the supported organization(s). Grants to organizations other than the supported organization will not ensure the attentiveness of a supported organization. Moreover, Type III supporting organizations generally are not permitted to make grants to organizations other than their supported organizations. See §1.509(a)-4(e)(1). Thus, the final and temporary regulations do not permit supporting organizations to satisfy the attentiveness test by making distributions to third-party organizations.

d. Valuation of assets

In describing how a NFI Type III supporting organization determines the fair market value of its non-exempt-use

assets for purposes of determining its distributable amount, the 2009 proposed regulations incorporated language used in §53.4942(a)-2(c), which describes how a private foundation values its assets for purposes of determining its distributable amount. The 2009 proposed regulations also incorporated language used in §53.4942(a)-2(c) in describing the assets (including exempt-use assets) that are excluded in determining the distributable amount.

Rather than duplicate all of the language in §53.4942(a)-2(c), the temporary regulations accomplish the same result as the 2009 proposed regulations by cross-referencing §53.4942(a)-2(c). More specifically, the temporary regulations state that the determination of the aggregate fair market value of a NFI Type III supporting organization's non-exempt-use assets will be made using the valuation methods described in §53.4942(a)-2(c). The temporary regulations also state that, for these purposes, the "non-exempt-use" assets of the supporting organization do not include assets described in §53.4942(a)-2(c)(2) or assets used (or held for use) to carry out the exempt purposes of the supported organization(s) (as defined by applying the principles described in §53.4942(a)-2(c)(3)).

The Treasury Department and the IRS do not intend for cross-referencing (rather than duplicating the language of) §53.4942(a)-2(c) to result in any substantive changes from the 2009 proposed regulations in how NFI Type III supporting organizations value their assets or in what assets are excluded in determining the distributable amount. However, to the extent that cross-referencing §53.4942(a)-2(c) could result in any unintended uncertainty on this point, the Treasury Department and the IRS have issued this change in temporary and proposed regulations to provide an opportunity for comment.

7. Consequences of Failure to Meet Requirements

A Type III supporting organization that fails to meet the requirements of these final and temporary regulations — and that also fails to meet the requirements of a Type I or II supporting organization and otherwise fails to qualify as a public charity under section 509(a)(1), (2), or (4) — will

be classified as a private foundation. Once classified as a private foundation, the section 507 rules regarding termination of private foundation status apply.

One commenter requested that the regulations reclassify a Type III supporting organization that fails to meet the requirements of the regulations as a private foundation as of the beginning of the taxable year in which the failure occurred only for purposes of section 507 and section 4940 (regarding excise taxes on net investment income) and as of the first day of the next taxable year for all other provisions of Chapter 42 (which contains other excise taxes applicable to private foundations). This commenter also recommended that, for purposes of Chapter 42, the identity of substantial contributors to a supporting organization within the meaning of section 507(d)(2) be determined by taking into account only contributions received after the date the organization is reclassified as a private foundation.

In addition, this same commenter made two recommendations related to termination of private foundation status under section 507. First, the commenter recommended that a Type III supporting organization that is reclassified as a private foundation for certain "non-structural" reasons (such as accepting gifts from persons that control the supported organization(s), failing to provide an annual notice, not making the required payout, or not satisfying the attentiveness test) be treated as having received an advance ruling that it can be expected to satisfy the requirements of a supporting organization during the 60-month termination period under §1.507-2(d) if the supporting organization includes certain explanatory information in its notice of termination of private foundation status. Second, the commenter recommended allowing a supporting organization to provide a notice of termination after the commencement of the 60-month termination period in appropriate cases — for example, during the one or two years after the regulations become effective.

The PPA changes did not impact the timing of when a Type III supporting organization is reclassified as a private foundation or when the various provisions of Chapter 42 apply after the Type III supporting organization fails to meet one or more of the requirements necessary to maintain its classification as a Type III

supporting organization (or other type of public charity). The PPA changes also did not impact the contributions that are taken into account when determining whether donors are substantial contributors. With respect to termination of private foundation status under section 507, section 507(b)(1)(B)(ii) states that organizations terminating their private foundation status to operate as a supporting organization or other public charity must notify the Secretary before, not after, the commencement of the 60-month termination period. Accordingly, the final and temporary regulations do not adopt this commenter's recommendations.

8. Transition and Other Relief Provisions

a. Notification requirement

The final regulations provide that a Type III supporting organization in existence on December 28, 2012, the effective date of the final regulations, must meet its notification requirement for its taxable year that includes December 28, 2012, by the later of the last day of the fifth calendar month following the close of that taxable year or the due date, including extensions, of its Form 990 (or other annual information return described in section 6033) for that taxable year. Thus, for example, a Type III supporting organization reporting on a calendar year basis that does not have to file its 2012 Form 990 until November 15, 2013, because it was granted two three-month extensions of time to file will have until November 15, 2013, to satisfy its notification requirement for 2012.

b. Responsiveness test

The final regulations, like the 2009 proposed regulations, provide that additional facts and circumstances, such as a historic and continuing relationship with supported organization(s), may be taken into account in establishing compliance with the responsiveness test for organizations that were supporting such supported organization(s) prior to November 20, 1970.

One commenter asked that the final regulations clarify whether this alternative responsiveness test for pre-November 20, 1970 organizations requires a Type III supporting organization to also satisfy the significant voice prong of the responsiveness

test under §1.509(a)–4(i)(3)(iii). Consistent with the existing regulations, the final regulations clarify that the significant voice prong is simply one factor along with other facts and circumstances that will be taken into account in determining compliance with the responsiveness test for pre-November 20, 1970 organizations.

c. Integral part test

The final regulations provide transition rules with respect to the integral part test for Type III supporting organizations in existence on December 28, 2012, the effective date of the final regulations. The 2009 proposed regulations included a transition rule under which an organization that met and continued to meet the requirements of existing §1.509(a)–4(i)(3)(ii) (that is, an organization meeting the integral part test by satisfying the “but for” test) would be treated as meeting the requirements of a functionally integrated Type III supporting organization set forth in §1.509(a)–4(i)(4) until the first day of the organization's first taxable year beginning after the publication of the final or temporary regulations. However, the Treasury Department and the IRS realize that because the final regulations are being published on December 28, 2012, Type III supporting organizations reporting on a calendar year basis that wish to qualify as functionally integrated may need additional time to comply with §1.509(a)–4(i)(4). As a result, the final regulations amend this transition rule to provide that a Type III supporting organization that met and continues to meet the “but for” test under existing §1.509(a)–4(i)(3)(ii) will be treated as meeting the requirements of a functionally integrated Type III supporting organization set forth in §1.509(a)–4(i)(4) until the first day of the organization's second taxable year beginning after December 28, 2012.

Like the 2009 proposed regulations, the final regulations provide that a Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of existing §1.509(a)–4(i)(3)(iii) (that is, an organization meeting the integral part test by satisfying the existing “payout” test) will be treated as meeting the requirements of a NFI Type III supporting organization set forth in §1.509(a)–4(i)(5) until the first

day of the organization's second taxable year beginning after December 28, 2012. However, for purposes of determining whether a Type III supporting organization treated as NFI under this transition relief creates an “excess amount” that can be carried over for five years, the distributable amount for the supporting organization's first taxable year beginning after December 28, 2012, is the greater of 85 percent of net adjusted income or 3.5 percent of the value of assets in the immediately preceding taxable year (that is, the distributable amount as ordinarily determined under the temporary regulations).

Section 1.509(a)–4(i)(11)(iii) of the 2009 proposed regulations provided that the distributable amount for NFI Type III supporting organizations is zero for the first taxable year beginning after the effective date of the final or temporary regulations. The Treasury Department and the IRS did not intend for this provision to apply to a NFI Type III supporting organization that had been meeting the payout test under existing §1.509(a)–4(i)(3)(iii), as is clear from the example provided in the preamble to the 2009 proposed regulations illustrating the application of the transition rules for a NFI Type III supporting organization. Rather, §1.509(a)–4(i)(11)(iii) of the 2009 proposed regulations more appropriately applies only to Type III supporting organizations that had been meeting the “but for” test under existing §1.509(a)–4(i)(3)(ii) in the taxable year of the final regulations' publication but seek to qualify as NFI (rather than functionally integrated) Type III supporting organizations in succeeding taxable years. Indeed, one commenter specifically asked for clarification regarding the transition relief applicable to Type III supporting organizations that had been satisfying the existing “but for” test but intend to convert to NFI status because they cannot or do not wish to qualify as functionally integrated under the final regulations.

The final regulations provide clarification regarding these transition rules. In particular, the final regulations provide that a Type III supporting organization in existence on December 28, 2012, that meets the requirements of the “but for” test under existing §1.509(a)–4(i)(3)(ii) in its taxable year including, December 28, 2012, but not in its first taxable year beginning after December 28, 2012, is

a NFI Type III supporting organization during that first taxable year and will be treated as having a distributable amount of zero for purposes of meeting the distribution and attentiveness requirements under §1.509(a)-4(i)(5)(ii)-(iii). Notwithstanding this transition relief, for purposes of determining whether such a NFI Type III supporting organization creates an “excess amount” that can be carried over for five years, the distributable amount for the first taxable year beginning after December 28, 2012, is the greater of 85 percent of net adjusted income or 3.5 percent of the value of assets in the immediately preceding taxable year (that is, the distributable amount as ordinarily determined under the temporary regulations). The same rule applies for purposes of determining the excess amount of an organization that has a distributable amount of zero in its first taxable year as a NFI Type III supporting organization under §1.509(a)-4(i)(5)(ii)(D).

Beginning in the second taxable year beginning after December 28, 2012, and in all succeeding taxable years, all Type III supporting organizations must meet either the requirements of §1.509(a)-4(i)(4) or §1.509(a)-4(i)(5). A Type III supporting organization intending to meet the requirements of a NFI Type III supporting organization under §1.509(a)-4(i)(5) in its second taxable year beginning after December 28, 2012, should value its assets in accordance with the valuation methods described in the final regulations beginning in its first taxable year beginning after December 28, 2012.

In addition, a Type III supporting organization treated as a functionally integrated Type III supporting organization during its first taxable year beginning after December 28, 2012, by virtue of satisfying the “but for” test under existing §1.509(a)-4(i)(3)(ii) but intending to meet the requirements of a NFI Type III supporting organization under §1.509(a)-4(i)(5) during its second taxable year beginning after December 28, 2012, will have a distributable amount for that second taxable year based on its income or the value of its assets in the immediately preceding taxable year. Such a Type III supporting organization will not have a distributable amount of zero in its second taxable year beginning after December 28, 2012, notwithstanding the general rule under §1.509(a)-4(i)(5)(ii)(D) that the

distributable amount for the first taxable year an organization is treated as a NFI Type III supporting organization is zero.

Two commenters requested that the regulations provide transition relief to NFI Type III supporting organizations whose governing instrument or other instrument prohibits distributions from capital or corpus, similar to the transition rules provided to certain private foundations organized before May 27, 1969, under §53.4942(a)-2(e). The final regulations provide transition relief to each NFI Type III supporting organization organized before September 24, 2009, that commences judicial proceedings before June 26, 2013, that are necessary to reform its governing or other instrument to allow it to meet the distribution requirement. During any taxable year in which such a judicial proceeding is pending, a NFI Type III supporting organization is excepted from the distribution requirement to the extent it is prevented from meeting the requirement by one or more mandatory provisions in its governing instrument or other instrument that prohibits distributions from capital or corpus. The transition relief applies only if the governing or other instrument at issue was executed (and the mandatory provisions were in effect) before September 24, 2009, the date the 2009 proposed regulations were published in the **Federal Register**, and if the judicial proceeding is not subject to any unreasonable delay for which the supporting organization is responsible. Beginning with the first taxable year following the termination of a judicial proceeding, a NFI Type III supporting organization must satisfy the distribution requirement regardless of the outcome of the judicial proceeding — a requirement materially identical to the requirements imposed by §53.4942(a)-2(e)(3) on pre-May 27, 1969 private foundations whose governing instruments prohibited distributions out of capital or corpus.

Numerous commenters responded to the request in the 2009 proposed regulations for comments regarding the need for a transition rule for NFI Type III supporting organizations whose assets consist predominantly of assets that are not readily marketable. Commenters suggested a longer transition period, varying from four to ten years, for supporting organizations with such assets. Some commenters suggested providing the longer transition

period to all supporting organizations with a sufficiently high proportion (for example, a “material” threshold of 20 percent or more) of not-readily-marketable assets. Other commenters recommended allowing a NFI Type III supporting organization to exclude the value of its not-readily-marketable assets from the assets used to calculate the distributable amount during the longer transition period (while possibly also requiring the organization to pay out substantially all of the income generated by its not-readily-marketable assets). A few commenters recommended a phase-in of the required distribution rate during a transition period (either for all NFI Type III supporting organizations or those holding substantial not-readily-marketable assets). As an alternative to transition relief, one commenter recommended a reasonable cause exception for NFI Type III supporting organizations that are unable to reasonably liquidate their assets that are not readily marketable.

The final and temporary regulations do not include a transition rule, or a reasonable cause exception, for NFI Type III supporting organizations with assets that are not readily marketable. After consideration of the comments received, the Treasury Department and the IRS have concluded that any such transition rule would unfairly impose a higher distribution requirement on those NFI Type III supporting organizations that invested primarily in liquid assets, as compared to those organizations that stayed heavily invested in not-readily-marketable assets. Moreover, all NFI Type III supporting organizations have at least two years after December 28, 2012, to satisfy the distribution requirement, and the Treasury Department and the IRS have concluded that this transition relief will give supporting organizations sufficient time to make any sales of not-readily-marketable assets that may be necessary to meet the distribution requirement.

Finally, like the 2009 proposed regulations, the final regulations continue to provide that a trust that on November 20, 1970, met and continues to meet the requirements under existing §1.509(a)-4(i)(4) and §1.509(a)-4(i)(9) of the final regulations will satisfy the integral part test as a NFI Type III supporting organization under §1.509(a)-4(i)(5). One organization questioned why a pre-November 20, 1970 trust that meets

all of the requirements set forth in §1.509(a)–4(i)(9) should have to petition the IRS for a ruling. In lieu of a ruling, the commenter requested a form on which the trust’s trustee could certify that the trust meets all of the requirements of §1.509(a)–4(i)(9) or, if a ruling were required, some assurance that the trust could operate on the assumption that it met the requirements of §1.509(a)–4(i)(9) until a ruling was issued. Like existing §1.509(a)–4(i)(4), §1.509(a)–4(i)(9) of the final regulations states that applicable trusts *may* (not “must”) obtain a ruling that they meet the requirements set forth in the provision. Accordingly, a trust that meets the requirements of §1.509(a)–4(i)(9) is not required to obtain a ruling. The final and temporary regulations do not alter this long-standing, optional ruling procedure.

c. Regulations under section 4943

This Treasury decision also includes final regulations under section 4943 that provide two transition rules to address excess business holdings for Type III supporting organizations affected by the PPA. The Treasury Department and the IRS did not receive any comments on these transition rules. The final regulations adopt the 2009 proposed regulations without change.

9. Miscellaneous

Several other incidental changes were made throughout the final regulations in order to increase clarity and consistency, none of which are intended to modify the substance of the 2009 proposed regulations.

10. Effective/applicability date

Both the final and temporary regulations are effective and applicable on December 28, 2012. However, supporting organizations should note that section 509(f), which was added by the PPA, is effective on and after August 17, 2006. In the case of section 509(f)(1)(B), which prohibits Type III supporting organizations from supporting foreign organizations, a transition rule applies under which Type III supporting organizations that were supporting a foreign organization on August 17, 2006, could continue supporting the foreign organization until the first day of

its third taxable year beginning after August 17, 2006. In addition, pursuant to section 1241(c) of the PPA, the responsiveness test for charitable trusts in existing §1.509(a)–4(i)(2)(iii) cannot support classification as a Type III supporting organization, effective August 17, 2007, in the case of trusts operated in connection with a supported organization on August 17, 2006. See PPA section 1241(e)(2)(A).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the temporary or the final regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) to the temporary regulations, refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin.

It is hereby certified that the collection of information contained in the final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the final regulations will not impact a substantial number of small entities.

Based on IRS Statistics of Income data for 2009, there are 1,238,201 active non-profit charitable organizations recognized by the IRS under section 501(c)(3), of which only 7,556 organizations self-identified as Type III supporting organizations. Thus, the number of organizations affected by the collection of information under §1.509(a)–4(i)(2) will not be substantial. In addition, the collection of information under §1.509(a)–4(i)(2) will impose a minimal burden on the affected organizations because all of the information that must be provided is information that the organizations are already required to maintain. Therefore, the collection of information under §1.509(a)–4(i)(2) will not have a significant economic impact.

The collection of information under §1.509(a)–4(i)(6)(v) is required only if a NFI Type III supporting organization

wishes to obtain the benefit of having certain amounts set aside for a specific project count toward the distribution requirement imposed by these proposed regulations. Based on IRS Statistics of Income data for 2009, only 4,438 organizations self-identified as Type III supporting organizations that are not functionally integrated. Because only a very small proportion of private foundations (less than 0.02 percent) submit ruling requests for set-asides each year, the Treasury Department and the IRS similarly expect that this elective provision will apply to only a very small subset of NFI Type III supporting organizations in any given year. Therefore, the number of organizations affected by the collection of information under §1.509(a)–4(i)(6)(v) will not be substantial. Accordingly, a regulatory flexibility analysis is not required for the final regulations.

Pursuant to section 7805(f) of the Code, the 2009 proposed regulations preceding the final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business and no comments were received. The temporary regulations (and the cross-reference notice of proposed rulemaking published in this issue of the Bulletin) will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Preston J. Quesenberry, and Stephanie N. Robbins, Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.509(a)–4 is amended by:

1. Adding paragraphs (a)(6), (f)(5), and (l).

2. Revising paragraph (i).

The revision and additions read as follows:

§1.509(a)–4 Supporting organizations.

(a) * * *

(6) For purposes of paragraph (i) of this section, the term “supported organization” means a specified publicly supported organization described in paragraphs (d)(2)(iv) or (d)(4) of this section.

* * * * *

(f) * * *

(5) *Contributions from controlling donors*—(i) *In general.* For any taxable year, a supporting organization shall not be considered to be operated, supervised, or controlled by, or operated in connection with, one or more publicly supported organizations, if the supporting organization accepts any gift or contribution from any person who is—

(A) A person (other than an organization described in section 509(a)(1), (2), or (4)) who directly or indirectly controls, either alone or together with persons described in paragraphs (f)(5)(i)(B) or (f)(5)(i)(C) of this section, the governing body of a specified publicly supported organization supported by such supporting organization;

(B) A member of the family (determined under section 4958(f)(4)) of an individual described in paragraph (f)(5)(i)(A) of this section; or

(C) A 35-percent controlled entity (as defined in section 4958(f)(3) by substituting “clause (i) or (ii) of section 509(f)(2)(B)” for “subparagraph (A) or (B) of paragraph (1)” in paragraph (f)(3)(A)(i) thereof).

(ii) *Meaning of control.* [Reserved]

* * * * *

(i) *Meaning of operated in connection with*—(1) *General rule.* For each taxable year, a supporting organization is operated in connection with one or more supported organizations (that is, is a “Type III supporting organization”) only if it is not disqualified by reason of paragraph (f)(5) (relating to acceptance of contributions from controlling donors) or paragraph

(i)(10) (relating to foreign supported organizations) of this section, and it satisfies—

(i) The notification requirement, which is set forth in paragraph (i)(2) of this section;

(ii) The responsiveness test, which is set forth in paragraph (i)(3) of this section; and

(iii) The integral part test, which is satisfied by maintaining significant involvement in the operations of one or more supported organizations and providing support on which the supported organization(s) are dependent; in order to satisfy this test, the supporting organization must meet the requirements either for—

(A) Functionally integrated Type III supporting organizations set forth in paragraph (i)(4) of this section; or

(B) Non-functionally integrated Type III supporting organizations set forth in paragraph (i)(5) of this section.

(2) *Notification requirement*—(i) *Annual notification.* For each taxable year, a Type III supporting organization must provide the following documents to each of its supported organizations:

(A) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support the supporting organization provided to the supported organization during the supporting organization’s taxable year immediately preceding the taxable year in which the written notice is provided (and during any other taxable year of the supporting organization ending after December 28, 2012, for which such support information has not previously been provided);

(B) A copy of the supporting organization’s Form 990, “*Return of Organization Exempt from Income Tax*,” or other annual information return required to be filed under section 6033 (although the supporting organization may redact from the return the name and address of any contributor to the organization) that was most recently filed as of the date the notification is provided (and any such return for any other taxable year of the supporting organization ending after December 28, 2012, that has not previously been provided to the supported organization); and

(C) A copy of the supporting organization’s governing documents as in effect on the date the notification is provided, including its articles of organization and by-laws (if any) and any amendments to such documents, unless such documents have

been previously provided and not subsequently amended.

(ii) *Electronic media.* The notification documents required by this paragraph (i)(2) may be provided by electronic media.

(iii) *Due date.* The notification documents required by this paragraph (i)(2) for any taxable year shall be postmarked or electronically transmitted by the last day of the fifth calendar month following the close of that taxable year.

(iv) *Principal officer.* For purposes of paragraph (i)(2)(i)(A) of this section, a principal officer includes, but is not limited to, a person who, regardless of title, has ultimate responsibility for—

(A) Implementing the decisions of the governing body of a supported organization;

(B) Supervising the management, administration, or operation of the supported organization; or

(C) Managing the finances of the supported organization.

(3) *Responsiveness test*—(i) *General rule.* A supporting organization meets the responsiveness test if it is responsive to the needs or demands of a supported organization. Except as provided in paragraph (i)(3)(v) of this section, in order to meet this test, a supporting organization must satisfy the requirements of paragraphs (i)(3)(ii) and (i)(3)(iii) of this section.

(ii) *Relationship of officers, directors, or trustees.* A supporting organization satisfies the requirements of this paragraph (i)(3)(ii) with respect to a supported organization only if—

(A) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the supported organization;

(B) One or more members of the governing body of the supported organization are also officers, directors, or trustees of, or hold other important offices in, the supporting organization; or

(C) The officers, directors, or trustees of the supporting organization maintain a close and continuous working relationship with the officers, directors, or trustees of the supported organization.

(iii) *Significant voice.* A supporting organization satisfies the requirements of this paragraph (i)(3)(iii) only if, by reason of paragraphs (i)(3)(ii)(A), (i)(3)(ii)(B), or

(i)(3)(ii)(C) of this section, the officers, directors, or trustees of the supported organization have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients by such supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

(iv) *Examples.* The provisions of this paragraph (i)(3) may be illustrated by the following examples:

Example 1. X, an organization described in section 501(c)(3), is a trust created under the last will and testament of Decedent. The trustee of X (Trustee) is a bank. Under the trust instrument, X supports M, a private university described in section 509(a)(1). The trust instrument provides that Trustee has discretion regarding the timing and amount of distributions consistent with the Trustee's fiduciary duties. Representatives of Trustee and an officer of M have quarterly face-to-face or telephonic meetings during which they discuss M's projected needs and ways in which M would like X to use its income and invest its assets. Additionally, Trustee communicates regularly with that officer of M regarding X's investments and plans for distributions from X. Trustee provides the officer of M with quarterly investment statements, the information required under paragraph (i)(2) of this section, and an annual accounting statement. Based on these facts, X meets the responsiveness test of this paragraph (i)(3) with respect to M.

Example 2. Y is an organization described in section 501(c)(3) and is a trust under State law. The trustee of Y (Trustee) is a bank. Y supports charities P, Q, and R, each an organization described in section 509(a)(1). Y makes annual cash payments to P, Q, and R. Once a year, Trustee sends to P, Q, and R the cash payment, the information required under paragraph (i)(2) of this section, and an accounting statement. Trustee has no other communication with P, Q, or R. Y does not meet the responsiveness test of this paragraph (i)(3).

(v) *Exception for pre-November 20, 1970 organizations.* In the case of a supporting organization that was supporting or benefiting a supported organization before November 20, 1970, additional facts and circumstances, such as a historic and continuing relationship between the organizations, may be taken into account, in addition to the factors described in paragraphs (i)(3)(ii) and (i)(3)(iii) of this section, to establish compliance with the responsiveness test.

(4) *Integral part test — functionally integrated Type III supporting organization—(i) General rule.* A supporting organization meets the integral part test and will be considered functionally integrated within the meaning of section 4943(f)(5)(B), if it—

(A) Engages in activities substantially all of which directly further the exempt purposes of one or more supported organizations and otherwise meets the requirements described in paragraph (i)(4)(ii) of this section;

(B) Is the parent of each of its supported organizations, as described in paragraph (i)(4)(iii) of this section; or

(C) Supports a governmental supported organization and otherwise meets the requirements of paragraph (i)(4)(iv) of this section.

(ii) *Substantially all activities directly further exempt purposes—(A) In general.* A supporting organization meets the requirements of this paragraph (i)(4)(ii) if it engages in activities substantially all of which—

(1) Directly further the exempt purposes of one or more supported organizations to which the supporting organization is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s); and

(2) But for the involvement of the supporting organization, would normally be engaged in by such supported organization(s).

(B) *Meaning of substantially all.* For purposes of paragraph (i)(4)(ii)(A) of this section, in determining whether substantially all of a supporting organization's activities directly further the exempt purposes of one or more supported organization(s) to which the supporting organization is responsive, all pertinent facts and circumstances will be taken into consideration.

(C) *Meaning of directly further.* Activities "directly further" the exempt purposes of one or more supported organizations for purposes of this paragraph (i)(4) only if they are conducted by the supporting organization itself, rather than by a supported organization. Holding title to and managing exempt-use assets described in §1.509(a)–4T(i)(8)(ii) are activities that directly further the exempt purposes of the supported organization within the meaning of this paragraph (i)(4). Conversely, except as provided in paragraph (i)(4)(ii)(D) of this section, fundraising, making grants (whether to the supported organization or to third parties), and investing and managing non-exempt-use assets are not activities that directly further the exempt pur-

poses of the supported organization within the meaning of this paragraph (i)(4).

(D) *Payments to individual beneficiaries.* The making or awarding of grants, scholarships, or other payments to individual beneficiaries who are members of the charitable class benefited by a supported organization will be treated as an activity that directly furthers the exempt purposes of that supported organization for purposes of this paragraph (i)(4) only if—

(1) The individual beneficiaries are selected on an objective and nondiscriminatory basis (as described in §53.4945–4(b));

(2) The officers, directors, or trustees of the supported organization have a significant voice in the timing of the payments, the manner of making them, and the selection of recipients; and

(3) The making or awarding of such payments is part of an active program of the supporting organization that directly furthers the exempt purposes of the supported organization and in which the supporting organization maintains significant involvement, as defined in §53.4942(b)–1(b)(2)(ii) (except that "supporting organization" shall be substituted for "foundation").

(iii) *Parent of supported organization(s).* For purposes of paragraph (i)(4)(i)(B) of this section, a supporting organization is the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacity) of the supporting organization.

(iv) *Supporting a governmental entity.* [Reserved]

(v) *Examples.* The provisions of this paragraph (i)(4) may be illustrated by the following examples:

Example 1. N, an organization described in section 501(c)(3), is the parent organization of a healthcare system consisting of two hospitals (Q and R) and an outpatient clinic (S), each of which is described in section 509(a)(1), and a taxable subsidiary (T). N is the sole member of each of Q, R, and S. Under the charter and bylaws of each of Q, R, and S, N appoints all members of the board of directors of each corporation. N engages in the overall coordination and supervision of the healthcare system's exempt subsidiary corporations Q, R, and S in approval of their budgets, strategic planning, marketing, resource allocation, se-

curing tax-exempt bond financing, and community education. N also manages and invests assets that serve as endowments of Q, R, and S. Based on these facts, N qualifies as a functionally integrated Type III supporting organization under paragraph (i)(4)(i)(B) of this section.

Example 2. V, an organization described in section 501(c)(3), is organized and operated as a supporting organization to L, a church described in section 509(a)(1). V meets the responsiveness test described in paragraph (i)(3) of this section with respect to L. L transferred to V title to the buildings in which L conducts religious services, Bible study, and community enrichment programs. Substantially all of V's activities consist of holding and maintaining these buildings, which L continues to use, free of charge, to further its exempt purposes. But for the activities of V, L would hold and maintain the buildings. Based on these facts, V satisfies the requirements of paragraph (i)(4)(ii) of this section.

Example 3. O is a local nonprofit food pantry described in section 501(c)(3). O collects donated food from local growers, grocery stores, and individuals and distributes this food free of charge to poor and needy people in O's community. O is organized and operated as a supporting organization to eight churches of a particular denomination located in O's community, each of which is described in section 509(a)(1). Control of O is vested in a five-member Board of Directors, which includes an official from one of the churches as well as four lay members of the churches' congregations. The officers of O maintain a close and continuing working relationship with each of the eight churches and as a result of such relationship, each of the eight churches has a significant voice in directing the use of the income and assets of O. As a result, O is responsive to its supported organizations. All of O's activities directly further the exempt purposes of the eight supported organizations to which it is responsive. Additionally, but for the activities of O, the churches would normally operate food pantries themselves. Based on these facts, O satisfies the requirements of paragraph (i)(4)(ii) of this section.

Example 4. M, an organization described in section 501(c)(3), was created by B, an individual, to provide scholarships for students of U, a private secondary school and an organization described in section 509(a)(1). U establishes the scholarship criteria, publicizes the scholarship program, solicits and reviews applications, and selects the scholarship recipients. M invests its assets and disburses the funds for scholarships to the recipients selected by U. M does not provide the scholarships as part of an active program in which it maintains significant involvement, as defined in §53.4942(b)-1(b)(2)(ii). Based on these facts, M does not satisfy the requirements of paragraph (i)(4)(ii) of this section.

Example 5. J, an organization described in section 501(c)(3), is organized as a supporting organization to community foundation G, an organization described in section 509(a)(1). J meets the responsiveness test described in paragraph (i)(3) of this section with respect to G. In addition to maintaining field-of-interest funds, sponsoring donor advised funds, and conducting general grantmaking activities, G also engages in activities to beautify and maintain local parks. Substantially all of J's activities consist of maintaining all of the local parks in the area

of community foundation G by performing activities such as establishing and maintaining trails, planting trees, and removing trash. But for the activities of J, G would normally engage in these efforts to beautify and maintain the local parks. Based on these facts, J satisfies the requirements of paragraph (i)(4)(ii) of this section.

(5) *Integral part test — non-functionally integrated Type III supporting organization*—(i) *General rule.* A supporting organization meets the integral part test and will be considered non-functionally integrated if it satisfies either—

(A) The distribution requirement of paragraph (i)(5)(ii) of this section and the attentiveness requirement of paragraph (i)(5)(iii) of this section; or

(B) The pre-November 20, 1970 trust requirements of paragraph (i)(9) of this section.

(ii) *Distribution requirement*—(A) *Annual distribution.* With respect to each taxable year, a supporting organization must distribute to or for the use of one or more supported organizations an amount equaling or exceeding the supporting organization's distributable amount for the taxable year, as defined in §1.509(a)-4T(i)(5)(ii)(B), on or before the last day of the taxable year.

(B) *Distributable amount.* [Reserved]. For further guidance, see §1.509(a)-4T(i)(5)(ii)(B).

(C) *Minimum asset amount.* [Reserved]. For further guidance, see §1.509(a)-4T(i)(5)(ii)(C).

(D) *First taxable year.* The distributable amount for the first taxable year an organization is treated as a non-functionally integrated Type III supporting organization is zero. Notwithstanding the foregoing, for purposes of determining whether an excess amount is created under paragraph (i)(7)(ii) of this section, the distributable amount for the first taxable year an organization is treated as a non-functionally integrated Type III supporting organization is the distributable amount that would apply under §1.509(a)-4T(i)(5)(ii)(B) in the absence of this paragraph (i)(5)(ii)(D).

(E) *Emergency temporary reduction.* The Secretary may provide by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) for a temporary reduction in the distributable amount in the case of a disaster or emergency.

(F) *Reasonable cause exception.* A non-functionally integrated Type III supporting organization that fails to meet the distribution requirement of this paragraph (i)(5)(ii) will not be classified as a private foundation for the taxable year in which it fails to meet the distribution requirement if the organization establishes to the satisfaction of the Secretary that—

(1) The failure was due solely to unforeseen events or circumstances that are beyond the organization's control, a clerical error, or an incorrect valuation of assets;

(2) The failure was due to reasonable cause and not to willful neglect; and

(3) The distribution requirement is met within 180 days after the organization is first able to distribute its distributable amount notwithstanding the unforeseen events or circumstances, or 180 days after the date the incorrect valuation or clerical error was or should have been discovered; however, no amounts paid to meet a distribution requirement for a prior taxable year under this paragraph (i)(5)(ii)(F)(3) may be counted toward the distribution requirement for the taxable year in which such amounts are paid.

(iii) *Attentiveness requirement*—(A) *General rule.* With respect to each taxable year, a non-functionally integrated Type III supporting organization must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization (within the meaning of paragraph (i)(5)(iii)(B) of this section) and to which the supporting organization is responsive (within the meaning of paragraph (i)(3) of this section).

(B) *Attentiveness.* A supported organization is attentive to the operations of the supporting organization during a taxable year if, in the taxable year, at least one of the following requirements is satisfied:

(1) The supporting organization distributes to the supported organization amounts equaling or exceeding 10 percent of the supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) received during the supported organization's last taxable year ending before the beginning of the supporting organization's taxable year.

(2) The amount of support received from the supporting organization is necessary to avoid the interruption of the carrying on of a particular function or activity of the supported organization. The support is necessary if the supporting organization or the supported organization earmarks the support for a particular program or activity of the supported organization, even if such program or activity is not the supported organization's primary program or activity, as long as such program or activity is a substantial one.

(3) Based on the consideration of all pertinent factors, including the number of supported organizations, the length and nature of the relationship between the supported organization and supporting organization, and the purpose to which the funds are put, the amount of support received from the supporting organization is a sufficient part of a supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) to ensure attentiveness. Normally the attentiveness of a supported organization is influenced by the amounts received from the supporting organization. Thus, the more substantial the amount involved in terms of a percentage of the supported organization's total support, the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the supporting organization is sufficient to ensure the attentiveness of the supported organization to the operations of the supporting organization (including attentiveness to the nature and yield of the supporting organization's investments), evidence of actual attentiveness by the supported organization is of almost equal importance. A supported organization is not considered to be attentive solely because it has enforceable rights against the supporting organization under state law.

(C) *Distribution to donor advised fund disregarded.* Notwithstanding paragraph (i)(5)(iii)(B) of this section, in determining whether a supported organization will be considered attentive to the operations of a supporting organization, any amount received from the supporting organization that is held by the supported organization in a donor advised fund described in section 4966(d)(2) will be disregarded.

(D) *Examples.* This paragraph (i)(5)(iii) is illustrated by the following examples:

Example 1. K, an organization described in section 501(c)(3), annually pays an aggregate amount equaling or exceeding its distributable amount described in §1.509(a)-4T(i)(5)(ii)(B) to L, a museum described in section 509(a)(2). K meets the responsiveness test described in paragraph (i)(3) of this section with respect to L. In recent years, L has earmarked the income received from K to underwrite the cost of carrying on a chamber music series consisting of 12 performances a year that are performed for the general public free of charge at its premises. The chamber music series is not L's primary activity but it is a substantial activity. L could not continue the performances without K's support. Based on these facts, K meets the requirements of paragraph (i)(5)(iii)(B)(2) of this section.

Example 2. M, an organization described in section 501(c)(3), annually pays an aggregate amount equaling or exceeding its distributable amount described in §1.509(a)-4T(i)(5)(ii)(B) to the Law School of N University, an organization described in section 509(a)(1). M meets the responsiveness test described in paragraph (i)(3) of this section with respect to N. M has earmarked the income paid over to N's Law School to endow a chair in International Law. Without M's continued support, N could not continue to maintain this chair. The chair is not N's primary activity but it is a substantial activity. Based on these facts, M meets the requirements of paragraph (i)(5)(iii)(B)(2) of this section.

Example 3. R is a charitable trust created under the will of B, who died in 1969. R's purpose is to hold assets as an endowment for S (a hospital), T (a university), and U (a national medical research organization), all organizations described in section 509(a)(1) and specifically named in the trust instrument, and to distribute all of the income each year in equal shares among the three named beneficiaries. Each year, R pays to S, T, and U an aggregate amount equaling or exceeding its distributable amount described in §1.509(a)-4T(i)(5)(ii)(B). Such payments equal less than one percent of the total support that each supported organization received in its most recently completed taxable year. Based on these facts, R does not meet the requirements of paragraph (i)(5)(iii)(B)(1) of this section. However, because B died prior to November 20, 1970, R could meet the requirements of paragraph (i)(5)(i)(B) of this section upon meeting all of the requirements of paragraph (i)(9) of this section.

Example 4. O is an organization described in section 501(c)(3). O is organized to support five private universities, V, W, X, Y, and Z, each of which is described in section 509(a)(1). O meets the responsiveness test under paragraph (i)(3) of this section only as to V. Each year, O distributes an aggregate amount that equals its distributable amount described in §1.509(a)-4T(i)(5)(ii)(B) and distributes an equal amount to each of the five universities. Accordingly, O distributes only one-fifth of its distributable amount to a supported organization to which O is also responsive (V). Because O does not distribute at least one-third of its distributable amount to supported organizations that are both attentive to the operations of O and to which the O is responsive, O

does not meet the attentiveness requirements of this paragraph (i)(5)(iii).

(6) *Distributions that count toward distribution requirement.* For purposes of this paragraph (i)(6), the amount of a distribution made to a supported organization is the amount of cash distributed or the fair-market value of the property distributed as of the date the distribution is made. The amount of a distribution will be determined solely on the cash receipts and disbursements method of accounting described in section 446(c)(1). Distributions by the supporting organization that count toward the distribution requirement imposed in paragraph (i)(5)(ii) of this section shall include, but not be limited to—

(i) Any amount paid to a supported organization to accomplish the supported organization's exempt purposes;

(ii) Any amount paid by the supporting organization to perform an activity that satisfies the requirements of paragraph (i)(4)(ii) of this section, but only to the extent such amount exceeds any income derived by the supporting organization from the activity;

(iii) Any reasonable and necessary administrative expenses paid to accomplish the exempt purposes of the supported organization(s), which do not include expenses incurred in the production of investment income;

(iv) Any amount paid to acquire an exempt-use asset described in §1.509(a)-4T(i)(8)(ii); and

(v) Any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization to which the supporting organization is responsive, with such set aside counting toward the distribution requirement for the taxable year in which the amount is set aside but not in the year in which it is actually paid, if at the time of the set-aside, the supporting organization—

(A) Obtains a written statement from each supported organization whose exempt purposes the specific project accomplishes, signed under penalty of perjury by one of the supported organization's principal officers, as defined in paragraph (i)(2)(iv) of this section, stating that the supported organization approves the project as one that accomplishes one or more of the supported organization's exempt purposes and also approves the supporting organization's determination

that the project is one that can be better accomplished by such a set-aside than by the immediate payment of funds;

(B) Establishes to the satisfaction of the Commissioner, by meeting the approval and information requirements described in §53.4942(a)–3(b)(7)(i) of this chapter and by providing the written statement described in paragraph (i)(6)(v)(A) of this section, that the amount set aside will be paid for the specific project within 60 months after it is set aside and that the project is one that can better be accomplished by the set-aside than by the immediate payment of funds; and

(C) Evidences the set-aside by the entry of a dollar amount on the books and records of the supporting organization as a pledge or obligation to be paid at a future date or dates within 60 months of the set aside.

(7) *Carryover of excess amounts*—(i) *In general.* If with respect to any taxable year, an excess amount, as defined in paragraph (i)(7)(ii) of this section, is created, such excess amount may be used to reduce the distributable amount in any of the five taxable years immediately following the taxable year in which the excess amount is created. An excess amount created in a taxable year can only be carried over for five taxable years.

(ii) *Excess amount.* An excess amount is created for any taxable year beginning after December 28, 2012, if the total distributions made in that taxable year that count toward the distribution requirement exceed the supporting organization's distributable amount for the taxable year, as determined under §1.509(a)–4T(i)(5)(ii)(B). With respect to any taxable year to which an excess amount is carried over, in determining whether an excess amount is created in that taxable year, the distributable amount is first reduced by any excess amounts carried over (with the oldest excess amounts applied first) and then by any distributions made in that taxable year.

(8) *Valuation of non-exempt-use assets.* [Reserved]. For further guidance, see §1.509(a)–4T(i)(8).

(9) *Alternate integral part test for certain trusts.* A trust (whether or not exempt from taxation under section 501(a)) that on November 20, 1970, met and continues to meet the requirements of paragraphs (i)(9)(i) through (i)(9)(v) of this section,

shall be treated as meeting the requirements of paragraph (i)(5) of this section if for taxable years beginning after October 16, 1972, the trustee of such trust makes annual written reports to all of the trust's supported organizations, setting forth a description of the trust's assets, including a detailed list of the assets and the income produced by such assets. A trust that meets the requirements of this paragraph (i)(9) may request a ruling that it is described in section 509(a)(3) in such manner as the Commissioner may prescribe. The requirements of this paragraph (i)(9) are as follows:

(i) All the unexpired interests in the trust are devoted to one or more purposes described in section 170(c)(1) or (c)(2)(B) and a deduction was allowed with respect to such interests under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), 2522, or corresponding provisions of prior law (or would have been allowed such a deduction if the trust had not been created before 1913).

(ii) The trust was created prior to November 20, 1970, and did not receive any grant, contribution, bequest or other transfer on or after such date. For purposes of this paragraph (i)(9)(ii), a split-interest trust described in section 4947(a)(2) that was created prior to November 20, 1970, was irrevocable on such date, and that becomes a charitable trust described in section 4947(a)(1) after such date shall be treated as having been created prior to such date.

(iii) The trust is required by its governing instrument to distribute all of its net income currently to a designated beneficiary supported organization. If more than one beneficiary supported organization is designated in the governing instrument of a trust, all of the net income must be distributable and must be distributed currently to each of such supported organizations in fixed shares pursuant to such governing instrument. For purposes of this paragraph (i)(9)(iii), the governing instrument of a charitable trust shall be treated as requiring distribution to a designated supported organization when the trust instrument describes the charitable purpose of the trust so completely that such description can apply to only one existing supported organization and is of sufficient particularity as to vest in such organiza-

tion rights against the trust enforceable in a court possessing equitable powers.

(iv) The trustee of the trust does not have discretion to vary either the beneficiary supported organizations or the amounts payable to the supported organizations. For purposes of this paragraph (i)(9)(iv), a trustee shall not be treated as having such discretion if the trustee has discretion to make payments of principal to the single supported organization that is currently entitled to receive all of the trust's income or if the trust instrument provides that the trustee may cease making income payments to a particular supported organization in the event of certain specific occurrences, such as the loss of exemption under section 501(c)(3) or classification under section 509(a)(1) or (a)(2) by the supported organization or the failure of the supported organization to carry out its charitable purpose properly.

(v) None of the trustees would be disqualified persons within the meaning of section 4946(a) (other than foundation managers under section 4946(a)(1)(B)) with respect to the trust if such trust were treated as a private foundation.

(10) *Foreign supported organizations.* A supporting organization is not operated in connection with one or more supported organizations if it supports any supported organization organized outside of the United States.

(11) *Transition rules*—(i) *Notification requirement.* A Type III supporting organization will be treated as having satisfied the notification requirement described in paragraph (i)(2) of this section for its taxable year that includes December 28, 2012, if the required notification is postmarked or electronically transmitted by the later of the last day of the fifth calendar month following the close of that taxable year or the due date (including extensions) of the supporting organization's annual information return described in section 6033 for that taxable year.

(ii) *Integral part test*—(A) *Qualification as a functionally integrated Type III supporting organization.* A Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of Treas. Reg. §1.509(a)–4(i)(3)(ii), as in effect prior to December 28, 2012, will be treated as meeting the requirements of paragraph (i)(4) of this section until the first day

of the organization's second taxable year beginning after December 28, 2012.

(B) *Qualification as a non-functionally integrated Type III supporting organization.* A Type III supporting organization in existence on December 28, 2012, that met and continues to meet the requirements of Treas. Reg. §1.509(a)-4(i)(3)(iii), as in effect prior to December 28, 2012, will be treated as meeting the requirements of paragraph (i)(5)(i)(A) of this section until the first day of its second taxable year beginning after December 28, 2012. Notwithstanding the foregoing, in determining whether an excess amount is created under paragraph (i)(7)(ii) of this section in the first taxable year beginning after December 28, 2012, the distributable amount for that taxable year of a Type III supporting organization treated as meeting the requirements of paragraph (i)(5)(i)(A) of this section under this paragraph (i)(11)(ii)(B) is the amount described in §1.509(a)-4T(i)(5)(ii)(B).

(C) *Transitioning to a non-functionally integrated Type III supporting organization in the first taxable year after effective date.* A Type III supporting organization in existence on December 28, 2012, that meets the requirements of Treas. Reg. §1.509(a)-4(i)(3)(ii), as in effect prior to December 28, 2012, in its taxable year including December 28, 2012, but not in its first taxable year beginning after December 28, 2012, is a non-functionally integrated Type III supporting organization and will be treated as having a distributable amount of zero for purposes of meeting the requirements of paragraph (i)(5)(i)(A) of this section during the organization's first taxable year beginning after December 28, 2012. Notwithstanding the foregoing, in determining whether an excess amount is created under paragraph (i)(7)(ii) of this section in the first taxable year beginning after December 28, 2012, the distributable amount for that taxable year of a Type III supporting organization described in this paragraph (i)(11)(ii)(C) is the amount described in §1.509(a)-4T(i)(5)(ii)(B), determined without regard to paragraph (i)(5)(ii)(D) of this section.

(D) *Second taxable year after effective date.* Beginning in the second taxable year beginning after December 28, 2012, and in all succeeding taxable years, all Type III supporting organizations described in this paragraph (i)(11)(ii) must meet ei-

ther the requirements of paragraph (i)(4) or (i)(5) of this section. If a Type III supporting organization described in paragraph (i)(11)(ii)(A) of this section does not meet the requirements of paragraph (i)(4) of this section during its second taxable year beginning after December 28, 2012, its distributable amount for that second taxable year will be determined under §1.509(a)-4T(i)(5)(ii)(B), without regard to paragraph (i)(5)(ii)(D) of this section. Any Type III supporting organization intending to meet the requirements of paragraph (i)(5) of this section in its second taxable year beginning after December 28, 2012, must value its assets in accordance with §1.509(a)-4T(i)(8) beginning in its first taxable year beginning after December 28, 2012.

(E) *Judicial proceedings to reform instruments.* During any taxable years in which there is pending a judicial proceeding that meets the requirements of this paragraph (i)(11)(ii)(E), a non-functionally integrated Type III supporting organization organized before September 24, 2009, will not have to comply with the distribution requirement under paragraph (i)(5)(ii) of this section to the extent such compliance would be inconsistent with mandatory provisions of a governing instrument or other instrument executed before September 24, 2009, that prohibits distributing capital or corpus. Beginning with the first taxable year following the taxable year in which such judicial proceeding is terminated, such a non-functionally integrated Type III supporting organization must satisfy the distribution requirement under paragraph (i)(5)(ii) of this section, regardless of the outcome of the judicial proceeding. Thus, if, during a taxable year after such a judicial proceeding, an organization fails to comply with paragraph (i)(5)(ii) of this section, the organization will not qualify as a non-functionally integrated Type III supporting organization, regardless of whether such failure to comply was a result of the organization operating in accordance with its governing instrument or other instrument. To meet the requirements of this paragraph (i)(11)(ii)(E), a judicial proceeding must be—

(I) Necessary to reform, or to excuse the supporting organization from compliance with, a governing instrument or other instrument (as in effect on September 24,

2009, and all times thereafter) in order to permit the organization to satisfy paragraph (i)(5)(ii) of this section;

(2) Commenced before June 26, 2013; and

(3) Not subject to any unreasonable delay for which the supporting organization is responsible.

* * * * *

(I) *Effective/applicability date.* Paragraphs (a)(6), (f)(5), and (i) of this section are effective on December 28, 2012.

Par. 3. Section 1.509(a)-4T is added to read as follows:

§1.509(a)-4T Supporting organizations (temporary).

(a) through (i)(5)(ii)(A) [Reserved]. For further guidance, see §1.509(a)-4(a) through (i)(5)(ii)(A).

(B) *Distributable amount.* Except as provided in §§1.509(a)-4(i)(5)(ii)(D) and 1.509(a)-4(i)(5)(ii)(E), the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and §53.4942(a)-2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution ("immediately preceding taxable year") or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Internal Revenue Code during the immediately preceding taxable year.

(C) *Minimum asset amount.* For purposes of this paragraph (i)(5), a supporting organization's minimum asset amount for the immediately preceding taxable year is 3.5 percent of the excess of the aggregate fair market value of all of the supporting organization's non-exempt-use assets (determined under paragraph (i)(8) of this section) in that immediately preceding taxable year over the acquisition indebtedness with respect to such non-exempt-use assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred), increased by—

(I) Amounts received or accrued during the immediately preceding taxable year as repayments of amounts which were taken

into account by the organization to meet the distribution requirement imposed in §1.509(a)–4(i)(5)(ii)(A) for any taxable year;

(2) Amounts received or accrued during the immediately preceding taxable year from the sale or other disposition of property to the extent that the acquisition of such property was taken into account by the organization to meet the distribution requirement imposed in §1.509(a)–4(i)(5)(ii)(A) for any taxable year; and

(3) Any amount set aside under §1.509(a)–4(i)(6)(v) to the extent it is determined during the immediately preceding taxable year that such amount is not necessary for the purposes for which it was set aside and such amount was taken into account by the organization to meet the distribution requirement imposed in §1.509(a)–4(i)(5)(ii)(A) for any taxable year.

(i)(5)(ii)(D) through (i)(7) [Reserved]. For further guidance, see §1.509(a)–4(i)(5)(ii)(D) through (i)(7).

(8) *Valuation of non-exempt-use assets.* For purposes of determining its distributable amount for a taxable year, a supporting organization determines its minimum asset amount, as defined in paragraph (i)(5)(ii)(C) of this section, by determining the aggregate fair market value of all of its non-exempt-use assets in the immediately preceding taxable year. For these purposes, the determination of the aggregate fair market value of all non-exempt-use assets shall be made using the valuation methods described in §53.4942(a)–2(c) of this chapter. The aggregate fair market value of the supporting organization’s non-exempt-use assets shall not be reduced by any amount that is set aside under §1.509(a)–4(i)(6)(v).

For these purposes, the non-exempt-use assets of the supporting organization are all assets of the supporting organization other than—

(i) Assets described in §53.4942(a)–2(c)(2)(i) through (iv) of this chapter (with “supporting organization” being substituted for “foundation” or “private foundation” and “August 17, 2006” being substituted for “December 31, 1969”); and

(ii) Exempt-use assets, which are assets that are used (or held for use) to carry out the exempt purposes of the supporting organization’s supported organization(s) (determined by applying the principles described in §53.4942(a)–2(c)(3) of this chapter) by either—

(A) The supporting organization; or

(B) One or more supported organizations, but only if the supporting organization makes the asset available to the supported organization(s) at no cost (or nominal rent) to the supported organization(s).

(i)(9) through (l) [Reserved]. For further guidance, see §1.509(a)–4(i)(9) through (l).

(m) *Effective/applicability date.* This section is effective on December 28, 2012. The applicability of this section expires on or before December 21, 2015.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 4. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 53.4943–11 is amended by revising the section heading and adding paragraphs (f) and (g) to read as follows:

§53.4943–11 *Effective/applicability date.*

* * * * *

(f) *Special transitional rule for private foundations that qualified as Type III supporting organizations before August 17, 2006.* The present holdings of a private foundation that qualified as a Type III supporting organization under section 509(a)(3) immediately before August 17, 2006, and that was reclassified as a private foundation under section 509(a) on or after August 17, 2006, solely as a result of the rules enacted by section 1241 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), will be determined using the same rules that apply to Type III supporting organizations under section 4943(f)(7).

(g) *Special transitional rule for Type III supporting organizations created as trusts before November 20, 1970.* A trust that qualifies as a Type III supporting organization under section 509(a)(3) and meets the requirements of §1.509(a)–4(i)(9) of this chapter will be treated as a “functionally integrated Type III supporting organization” for purposes of section 4943(f)(3)(A).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 *OMB Control numbers.*

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.509(a)–4	1545–2157
* * * * *	

Steven T. Miller,
Deputy Commissioner for
Services and Enforcement.

Mark J. Mazur,
Assistant Secretary
of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 21, 2012, 4:15 p.m., and published in the issue of the Federal Register for December 28, 2012, 77 F.R. 76382)

Approved December 19, 2012.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for March 2013.

Rev. Rul. 2013-7

This revenue ruling provides various prescribed rates for federal income tax purposes for March 2013 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the

Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2013-7 TABLE 1
Applicable Federal Rates (AFR) for March 2013

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.22%	.22%	.22%	.22%
110% AFR	.24%	.24%	.24%	.24%
120% AFR	.26%	.26%	.26%	.26%
130% AFR	.29%	.29%	.29%	.29%
<i>Mid-term</i>				
AFR	1.09%	1.09%	1.09%	1.09%
110% AFR	1.20%	1.20%	1.20%	1.20%
120% AFR	1.31%	1.31%	1.31%	1.31%
130% AFR	1.43%	1.42%	1.42%	1.42%
150% AFR	1.65%	1.64%	1.64%	1.63%
175% AFR	1.92%	1.91%	1.91%	1.90%
<i>Long-term</i>				
AFR	2.66%	2.64%	2.63%	2.63%
110% AFR	2.92%	2.90%	2.89%	2.88%
120% AFR	3.20%	3.17%	3.16%	3.15%
130% AFR	3.46%	3.43%	3.42%	3.41%

REV. RUL. 2013-7 TABLE 2

Adjusted AFR for March 2013

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.22%	.22%	.22%	.22%
Mid-term adjusted AFR	1.05%	1.05%	1.05%	1.05%
Long-term adjusted AFR	2.66%	2.64%	2.63%	2.63%

REV. RUL. 2013-7 TABLE 3

Rates Under Section 382 for March 2013

Adjusted federal long-term rate for the current month	2.66%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.77%

REV. RUL. 2013-7 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for March 2013

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.43%
Appropriate percentage for the 30% present value low-income housing credit	3.18%

REV. RUL. 2013-7 TABLE 5

Rate Under Section 7520 for March 2013

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.4%
---	------

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2013. See Rev. Rul. 2013-7, page 608.

Part III. Administrative, Procedural, and Miscellaneous

25-Year Average Segment Rates and Adjusted 24-Month Average Segment Rates Used for Pension Funding for Plan Years Beginning in 2013

Notice 2013-11

This notice provides guidance on the 25-year average segment rates that are applied to adjust the otherwise applicable 24-month average segment rates that are used to compute the minimum contribution requirements for single-employer defined benefit plans under § 430 of the Internal Revenue Code (Code) and § 303 of the Employee Retirement Income Security Act of 1974 (ERISA) for plan years beginning in 2013. The guidance reflects the changes made to the Code and ERISA by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141.

BACKGROUND

Section 430 specifies the minimum funding requirements that generally apply to single-employer defined benefit pension plans pursuant to § 412. Section 430(h)(2) specifies interest rates that are used for purposes of calculating the minimum required contribution. The interest rates that are used for this purpose are a set of three segment rates described in § 430(h)(2)(C)(i), (ii), and (iii), or, alternatively, a full yield curve as described in § 430(h)(2)(D)(ii).

Each segment rate described in § 430(h)(2)(C)(i), (ii), and (iii) is, for any month, the single rate of interest determined by the Secretary for the month on the basis of the applicable corporate bond yield curve for that month, taking into account only that portion of the yield curve applicable to that segment. Section 430(h)(2)(D)(i) provides that the Secretary shall prescribe a corporate bond yield curve applicable for each month. The applicable corporate bond yield curve is, with respect to any month, a yield curve which reflects a 24-month average (the

average of the yield curve values for the preceding month and the prior 23 months) of the yields on investment grade corporate bonds with varying maturities that are in the top 3 quality levels available. Under § 430(h)(2)(D)(ii), an employer may elect to use the corporate bond yield curve determined without regard to the 24-month averaging in lieu of the segment rates.

Section 40211(a) of MAP-21 adds § 430(h)(2)(C)(iv), generally effective for plan years beginning on or after January 1, 2012. Section 430(h)(2)(C)(iv) provides that, for a plan year, each of the three segment rates described in § 430(h)(2)(C)(i), (ii), and (iii) is adjusted as necessary to fall within a specified range that is determined based on a percentage of the average of the corresponding segment rates for the 25-year period ending on September 30 preceding the calendar year that includes the first day of that plan year. Under § 430(h)(2)(C)(iv)(II), for plan years beginning in 2013, each segment rate is adjusted so that it is no less than 85% and no more than 115% of the corresponding 25-year average segment rate. For later plan years, this range is gradually expanded, so that the segment rates for plan years beginning after 2015 are no less than 70% and no more than 130% of the corresponding 25-year average segment rates. Section 430(h)(2)(C)(iv)(I) provides that the Secretary may prescribe equivalent rates for any years in the 25-year period for which segment rates are not available.

Section 430(h)(2)(F) (as amended by MAP-21) provides that each month the Secretary shall publish the corporate bond yield curve, the segment rates in § 430(h)(2)(C), and the 25-year average of the segment rates. Section 430(h)(2)(F) also provides that the Secretary shall publish a description of the methodology used to determine the yield curve and the segment rates in sufficient detail to enable plans to make reasonable predictions regarding the yield curve and rates for future months.

Notice 2007-81, 2007-2 C.B. 899, provides guidelines for determining the monthly corporate bond yield curve and

the 24-month average corporate bond segment rates. Notice 2012-55, 2012-36 I.R.B. 332, provides information on the determination of the 25-year average segment rates for plan years beginning in 2012.

DEVELOPMENT OF 25-YEAR AVERAGE SEGMENT RATES FOR PLAN YEARS BEGINNING IN 2013

The Treasury Department has constructed the corporate bond yield curves for the period October 1987 to September 2005 using the method used for constructing the corporate bond yield curves for current periods. Using these historical yield curves, segment rates were calculated for each month from October 1987 to September 2005. Annual averages of those segment rates are listed in the Appendix at the end of this notice.

Based on the segment rates from October 1987 to September 2012, the 25-year averages for the period ending September 30, 2012, of the first, second, and third segment rates are 5.81, 7.23 and 7.95 percent, respectively.

ADJUSTED 24-MONTH AVERAGE SEGMENT RATES

In prior notices, the Treasury Department and the Internal Revenue Service issued 24-month average segment rates that did not reflect the adjustment required by § 430(h)(2)(C)(iv) (as added by MAP-21) for plan years beginning in 2013. The table below contains previously issued 24-month average segment rates without adjustment, and, for plan years beginning in 2013, the adjusted 24-month average segment rates taking into account the 85-115% corridor around the 25-year average segment rates:

For Plan Years Beginning In			24-Month Average Segment Rates Not Adjusted			Adjusted 24-Month Average Segment Rates, Based on Applicable Percentage of 25-Year Average Rates		
	Applicable Month		First Segment	Second Segment	Third Segment	First Segment	Second Segment	Third Segment
2013	February	2013	1.58	4.34	5.38	4.94	6.15	6.76
2013	January	2013	1.62	4.40	5.45	4.94	6.15	6.76
2013	December	2012	1.66	4.47	5.52	4.94	6.15	6.76
2013	November	2012	1.69	4.53	5.60	4.94	6.15	6.76
2013	October	2012	1.72	4.58	5.67	4.94	6.15	6.76
2013	September	2012	1.75	4.62	5.72	4.94	6.15	6.76

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee

Plans, Tax Exempt and Government Entities Division. However, other personnel from the Internal Revenue Service and the Treasury Department

participated in preparing this notice. Mr. Montanaro may be e-mailed at RetirementPlanQuestions@irs.gov.

APPENDIX

ANNUAL AVERAGE SEGMENT RATES USED TO DEVELOP THE 25-YEAR AVERAGE AS OF SEPTEMBER 30, 2012

Table 1: Annual Averages of 24-Month Segment Rates						
Annual Period						
	From October of Year		To September of Year	First Segment	Second Segment	Third Segment
1	1987	-	1988	8.19	9.52	9.86
2	1988	-	1989	8.78	9.83	10.01
3	1989	-	1990	9.22	9.61	9.67
4	1990	-	1991	9.13	9.44	9.66
5	1991	-	1992	8.36	9.25	9.89
6	1992	-	1993	6.81	8.49	9.66
7	1993	-	1994	5.55	7.59	8.98
8	1994	-	1995	6.03	7.62	8.64
9	1995	-	1996	6.66	7.73	8.51
10	1996	-	1997	6.44	7.37	8.18
11	1997	-	1998	6.33	7.18	7.92
12	1998	-	1999	6.03	6.73	7.51
13	1999	-	2000	6.20	6.91	7.59
14	2000	-	2001	6.73	7.50	8.02
15	2001	-	2002	5.90	7.29	7.96
16	2002	-	2003	4.27	6.56	7.57
17	2003	-	2004	3.16	5.88	7.17
18	2004	-	2005	3.06	5.53	6.80
19	2005	-	2006	4.02	5.49	6.40
20	2006	-	2007	4.99	5.66	6.29
21	2007	-	2008	5.21	5.97	6.48
22	2008	-	2009	5.23	6.54	6.75
23	2009	-	2010	4.38	6.57	6.71
24	2010	-	2011	2.67	5.66	6.41
25	2011	-	2012	1.90	4.92	6.04

Note. This revenue procedure will be reproduced as the next revision of IRS Publication 1167, General Rules and Specifications for Substitute Forms and Schedules.

Rev. Proc. 2013-17

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Part 1

Introduction to Substitute Forms

Section 1.1 — Overview of Revenue Procedure 2013–17

1.1.1 Purpose

The purpose of this revenue procedure is to provide guidelines and general requirements for the development, printing, and approval of substitute tax forms. Approval will be based on these guidelines. After review and approval, submitted forms will be accepted as substitutes for official IRS forms.

1.1.2 Unique Forms

Certain unique specialized forms require the use of other additional publications to supplement this publication. See *Part 4*.

1.1.3 Scope

The IRS accepts quality substitute tax forms that are consistent with the official forms and have no adverse impact on our processing. The IRS Substitute Forms Unit administers the formal acceptance and processing of these forms nationwide. While this program deals with paper documents, it also reviews for approval other processing and filing forms such as those used in electronic filing.

Only those substitute forms that comply fully with these requirements are acceptable. This revenue procedure is updated as required to reflect pertinent tax year form changes and to meet processing and/or legislative requirements.

1.1.4 Forms Covered by This Revenue Procedure

The following types of forms are covered by this revenue procedure:

- IRS tax forms and their related schedules,
- Worksheets as they appear in instruction packages,
- Applications for permission to file returns electronically and forms used as required documentation for electronically filed returns,
- Powers of Attorney,
- Over-the-counter estimated tax payment vouchers, and
- Forms and schedules relating to partnerships, exempt organizations, and employee plans.

1.1.5

Forms Not Covered by This Revenue Procedure

The following types of forms are not covered by this revenue procedure:

- W-2 and W-3 (see Publication 1141 for information on these forms),
- W-2c and W-3c (see Publication 1223 for information on these forms),
- 941, Schedule B (Form 941) and Schedule R (Form 941) (see Publication 4436 for information on these forms),
- 1096, 1097-BTC, 1098 series, 1099 series, 3921, 3922, 5498 series, W-2G, 1042-S, and 8935 (see Publication 1179 for information on these forms),
- 8027 (see Publication 1239 for information on this form),
- Forms 1040-ES (OCR) and 1041-ES (OCR), which may not be reproduced,
- Forms 5500, 5500-SF and associated schedules (For more information on these forms, see the Department of Labor website at www.efast.dol.gov),
- Forms 5300, 5307, 8717, and 8905, bar-coded forms requiring separate approval,
- FinCEN forms, TD F 90–22 forms, and Form 8300,
- Requests for information or documentation initiated by the IRS,
- Forms used internally by the IRS,
- State tax forms,
- Forms developed outside the IRS, and
- General Instructions and Specific Instructions (These are not reviewed by the Substitute Forms Program Unit).

Section 1.2 — IRS Contacts

1.2.1

Where To Send Substitute Forms

Send your substitute forms for approval to the following offices (do not send forms with taxpayer data):

Form	Office and Address
All FinCEN family of forms, TD F 90–22 family of forms, and Form 8300	Enterprise Computing Center Detroit (ECC-D) BSA Compliance Branch P.O. Box 32063 Detroit, MI 48232–0063
Form 8300, FBAR, and Casino CTR [FinCEN Form 103]	Enterprise Computing Center Detroit (ECC-D) BSA Compliance Branch P.O. Box 32621 Detroit, MI 48232–0621
5500, 5500-SF, and Schedules for Form 5500	Check EFAST2 information at the Department of Labor’s website at www.efast.dol.gov
5300, 5307, 8717, and 8905	Sandra.K.Barnes@irs.gov
Software developer vouchers (See <i>Sections 2.3.7 — 2.3.9.</i>)	Internal Revenue Service Attn: Doris Bethea, C5–226 5000 Ellin Rd. Lanham, MD 20706 Doris.E.Bethea@irs.gov
All others (except W-2, W-2c, W-3, W-3c, 941, Schedules B and R (Form 941), 1096, 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, 1042-S, 8027 and 8935) covered by this publication	Internal Revenue Service Attn: Substitute Forms Program SE:W:CAR:MP:T:M:S, IR 6526 1111 Constitution Avenue, NW Room 6526 Washington, DC 20224

In addition, the Substitute Forms Program Unit can be contacted via email at substituteforms@irs.gov. Please include “PDF Submissions” on the subject line.

For questions about Forms W-2 and W-3, refer to IRS Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3. For Forms W-2c and W-3c, refer to IRS Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

For Form 941 and Schedules B and R (Form 941), refer to IRS Publication 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941) and Schedule R (Form 941). For Forms 1096, 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, 1042-S, and 8935, refer to IRS Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns. For Form 8027, refer to IRS Publication 1239, Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically.

Section 1.3 — What's New

1.3.1 What's New

The following changes have been made to Publication 1167 since the last revision (December 2011).

- **Tax deductions and credits have been extended for tax year 2012.** The following tax deductions and credits have been extended for tax year 2012 by the American Taxpayer Relief Act of 2012, P.L. 112–240: *The election to deduct state and local sales taxes instead of state and local income taxes, *Mortgage insurance premium deduction, *The deduction for certain domestic production activities in Puerto Rico, *Energy efficient appliance credit, *Credit for employer differential wage payments, *Credit for increasing research activities, *Empowerment zone credit, *Indian employment credit, *Biodiesel and renewable diesel fuels credit.
 - **Qualified disability trust.** For 2012, qualified disability trusts can claim an exemption of up to \$3,800. The exemption is no longer phased out.
 - **Bankruptcy estate filing threshold.** For tax years beginning in 2012, the requirement to file a return for a bankruptcy estate applies only if gross income is at least \$9,750.
 - **Schedule K-1 (Form 1065).** On the Schedule K-1 (Form 1065), we added new item I2 for the partnership to indicate whether the partner is a retirement plan (IRA/SEP/Keogh/etc.).
 - **Principal Business Activity (PBA) Codes.** In the instructions, the list of Principal Business Activity (PBA) Codes have been revised.
 - **No separate payment card reporting requirements.** Gross receipts received via payment card (credit and debit cards) and third party network payments are not separately reported on Form 1065 and Form 1120S.
 - **Partners that are foreign governments under section 892.** On page 3 of the form, we added line 20 to Schedule B, asking the filer to enter the number of partners that are foreign governments under section 892.
 - **Editorial changes.** We made editorial changes throughout, redundancies were eliminated as much as possible.
-

Section 1.4 — Definitions

1.4.1 Substitute Form

A tax form (or related schedule) that differs in any way from the official version and is intended to replace the form that is printed and distributed by the IRS. This term also covers those approved substitute forms exhibited in this revenue procedure.

1.4.2 Printed/Preprinted Form

A printed form that has marginal perforations for use with automated and high-speed printing equipment.

1.4.3 Preprinted Pin-Fed Form

A preprinted form in which the taxpayer's tax entry information has been inserted by a computer, computer printer, or other computer-type equipment.

1.4.4 Computer Prepared Substitute Form

1.4.5 Computer Generated Substitute Tax Return or Form

A tax return or form that is entirely designed and printed using a computer printer on plain white paper. This return or form must conform to the physical layout of the corresponding IRS form, although the typeface may differ. The text should match the text on the officially printed form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis.

Exception. All jurats (perjury statements) must be reproduced verbatim.

1.4.6 Manually Prepared Form

A preprinted reproduced form in which the taxpayer's tax entry information is entered by an individual using a pen, pencil, typewriter, or other non-automated equipment.

1.4.7 Graphics

Parts of a printed tax form that are not tax amount entries or required text. Examples of graphics are line numbers, captions, shadings, special indicators, borders, rules, and strokes created by typesetting, photographics, photocomposition, etc.

1.4.8 Acceptable Reproduced Form

A legible photocopy or an exact replica of an original form.

1.4.9 Supporting Statement (Supplemental Schedule)

A document providing detailed information to support a line entry on an official or approved substitute form and filed with (attached to) a tax return.

Note. A supporting statement is not a tax form and does not take the place of an official form.

1.4.10 Specific Form Terms

The following specific terms are used throughout this revenue procedure in reference to all substitute forms: format, sequence, line reference, item caption, and data entry field.

1.4.11 Format

The overall physical arrangement and general layout of a substitute form.

1.4.12 Sequence

Sequence is an integral part of the total format requirement. The substitute form should show the same numeric and logical placement order of data, as shown on the official form.

1.4.13 Line Reference

The line numbers, letters, or alphanumerics used to identify each captioned line on an official form. These line references are printed to the immediate left of each caption and/or data entry field.

1.4.14 Item Caption

The text on each line of a form, which identifies the data required.

1.4.15 Data Entry Field

Designated areas for the entry of data such as dollar amounts, quantities, responses and checkboxes.

1.4.16 Advance Draft

A draft version of a new or revised form may be posted to the IRS website (<http://www.irs.gov/app/picklist/list/draftTaxForms.html>) for information purposes. Substitute forms may be submitted based on these advance drafts, but any submitter that receives forms approval based on these early drafts is responsible for monitoring and revising forms to mirror any revisions in the final forms provided by the IRS.

1.4.17 Approval

Generally, approval could be in writing or assumed after 20 business days from our receipt for forms that have not been substantially changed by the IRS. Also, this does not apply to newly created or substantially revised IRS forms.

Section 1.5 — Agreement

1.5.1 Important Stipulation of This Revenue Procedure

Any person or company who uses substitute forms and makes all or part of the changes specified in this revenue procedure agrees to the following stipulations.

- The IRS presumes that any required changes are made in accordance with these procedures and will not be disruptive to the processing of the tax return.
 - Should any of the changes be disruptive to the IRS's processing of the tax return, the person or company agrees to accept the determination of the IRS as to whether the form may continue to be filed.
 - The person or company agrees to work with the IRS in correcting noted deficiencies. Notification of deficiencies may be made by any combination of fax, letter, email, or phone contact and may include the request for the re-submission of unacceptable forms.
-

1.5.2 Response Policy and Stipulations

The Substitute Forms Unit (the Unit) will email confirmation, as much as possible, of receipt of your forms submission. Your submission can be considered approved if you do not receive a response from the Unit within 20 business days of the receipt date. If the Unit anticipates problems in completing the review of your submission within the 20 business day period, the Unit will send an interim email notifying you of the extended period for review.

Once the substitute forms have been approved by the Substitute Forms Unit, you can release them after the final versions of the forms have been issued by the IRS. Before releasing the forms, you are responsible for updating forms approved as draft and for making form changes we requested.

The policy has the following stipulations.

- This 20-day policy applies to electronic submissions only. It does not apply to substitute forms submitted for approval by paper or fax.
 - The policy applies to submissions of 15 (optimal) or fewer items. Submissions of more than 15 items may require additional review time.
 - If you send a large number of submissions within a short period of time, processing may be delayed.
 - Delays in processing could occur if the Unit finds significant errors in your submission. The Unit will send you an interim email in this case.
 - Any anticipated problems in processing your submission within the 20-day period will generate an interim email on or about the 15th business day.
 - If any significant inaccuracies are discovered after the 20-day period, the Unit reserves the right to inform you and will require that changes be made to correct the inaccuracies.
 - The policy does not apply to substantially revised forms or to new forms created by the IRS for which you have already made an initial submission.
-

Part 2

General Guidelines for Submissions and Approvals

Section 2.1 — General Specifications for Approval

2.1.1 Overview

If you produce any tax forms following only those changes specifically outlined by the Substitute Forms Unit, you can generate your own substitute forms without further approval. If your changes are more extensive, you must get IRS approval before using substitute forms. More extensive changes can include the use of typefaces and sizes other than those found on the official form and the condensing of line item descriptions to save space.

Note. The 20-day turnaround policy may not apply to extensive changes.

2.1.2 Email Submissions

The Substitute Forms Program accepts substitute forms submissions via email. The email address is *substituteforms@irs.gov*. Please include the term “PDF Submissions” on the subject line.

Follow these guidelines.

- Your submission should include all the forms you wish to submit in one attached pdf file. **Do not email each form individually.**
- Small (optimally 15 forms), rather than large, submissions should expedite processing. A submission should contain a maximum of 15 forms.
- An approval check sheet listing the forms you are submitting should always be included in the pdf file along with the forms. See a sample check sheet in Exhibit D.
- Optimize pdf files before submitting.
- The maximum allowable email attachment is 2.5 megabytes.
- The Substitute Forms Unit accepts zip files.
- To alleviate delays during the peak time of September through December, submit advance draft forms as early as possible.

If the guidelines are not followed, you may need to resubmit.

Emailing pdf submissions will not expedite review and approval. The pdf submissions will be assigned a control number and put in queue along with mailed-in paper submissions. In addition to submitting forms via email, you may send your submissions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:M:S, IR 6526
1111 Constitution Avenue, NW
Washington, DC 20224

2.1.3 Expediting the Process

Follow these basic guidelines for expediting the process.

- Always include a check sheet for the Substitute Forms Unit’s response.
 - Follow Publication 1167 for general substitute form guidelines. Follow the specialized publications produced by the Substitute Forms Unit for other specific forms.
 - To spread out the workload, send in draft versions of substitute forms when they are posted. **Note.** Be sure to make any changes to approved drafts before releasing final versions.
-

2.1.4 Schedules

Schedules are considered to be an integral part of a complete tax return. A schedule may be included as part of a form or printed separately.

2.1.5 Examples of Schedules That Must Be Submitted with the Return

Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is an example of this situation. Its Schedules A through U have pages numbered as part of the basic return. For Form 706 to be considered for approval, the entire form including Schedules A through PC must be submitted.

2.1.6 Examples of Schedules That Can Be Submitted Separately

However, Schedules C, D, and E and Form 1040 are examples of schedules that can be submitted separately. Although printed by the IRS as a supplement to Form 1040, none of these schedules are required to be filed with Form 1040. These schedules may be separated from Form 1040 and submitted as substitute forms.

2.1.7 Use and Distribution of Unapproved Forms

The IRS is continuing a program to identify and contact tax return preparers, forms developers, and software publishers who use or distribute unapproved forms that do not conform to this revenue procedure. The use of unapproved forms hinders the processing of the returns.

Section 2.2 — Highlights of Permitted Changes and Requirements

2.2.1 Methods of Reproducing Internal Revenue Service Forms

There are methods of reproducing IRS printed tax forms suitable for use as substitutes without prior approval.

- You can photocopy most tax forms and use them instead of the official ones. The entire substitute form, including entries, must be legible.
 - You can reproduce any current tax form as cut sheets, snap sets, and marginally punched, pin-fed forms as long as you use an official IRS version as the master copy.
 - You can reproduce a form that requires a signature as a valid substitute form. Many tax forms (including returns) have a taxpayer signature requirement as part of the form layout. The jurat/perjury statement/ signature line areas must be retained and worded exactly as on the official form. The requirement for a signature, by itself, does not prohibit a tax form from being properly computer-generated.
-

Section 2.3 — Vouchers

2.3.1 Overview

All payment vouchers (Forms 940-V, 941-V, 943-V, 945-V, 1040-ES, 1040-V, 1041-V and 2290-V) must be reproduced in conjunction with their forms. Substitute vouchers must be the same size as the officially printed vouchers. Vouchers that are prepared for printing on a laser printer may include a scan line.

2.3.2 Scan Line Specifications

Item:	NNNNNNNNNAA	XXXX	NN	N	NNNNNN	NNN	
	A	B	C	D	E	F	G
A.	Social Security Number/Employer Identification Number (SSN/EIN) has 9 numeric (N) spaces.						
B.	Check Digits have 2 alpha (A) spaces.						
C.	Name Control has 4 alphanumeric (X) spaces.						
D.	Master File Tax (MFT) Code has 2 numeric (N) spaces (see below).						
E.	Taxpayer Identification Number (TIN) Type has 1 numeric (N) space (see below).						

- F. Tax Period has 6 numeric (N) spaces in year/month format (YYYYMM).
- G. Transaction Code has 3 numeric (N) spaces.
-

2.3.3
MFT Code

Code Number for Forms:

- 1040 (family) — 30,
 - 940 — 10,
 - 941 — 01,
 - 943 — 11,
 - 944 — 14,
 - 945 — 16,
 - 1041-V — 05,
 - 2290 — 60, and
 - 4868 — 30.
-

2.3.4
TIN Type

Type Number for:

- Form 1040 (family), 4868 — 0, and
 - Forms 940, 941, 943, 944, 945, 1041-V and 2290 — 2.
-

2.3.5
Voucher Size

The voucher size must be exactly 8.0" x 3.25" (Forms 1040-ES and 1041-ES must be 7.625" x 3.0"). The document scan line must be vertically positioned 0.25 inches from the bottom of the scan line to the bottom of the voucher. The last character on the right of the scan line must be placed 3.5 inches from the right leading edge of the document. The minimum required horizontal clear space between characters is .014 inches. The line to be scanned must have a clear band 0.25 inches in height from top to bottom of the scan line, and from border to border of the document. "Clear band" means no printing except for dropout ink.

2.3.6
Print and Paper Weight

Vouchers must be imaged in black ink using OCR A, OCR B, or Courier 10. These fonts may not be mixed in the scan line. The horizontal character pitch is 10 CPI. The preferred paper weight is 20 to 24 pound OCR bond.

2.3.7
Specifications for Software Developers

Certain vouchers may be reproduced for use in the IRS lockbox system. These include the 1040-V, 1040-ES, 1041-V, the 940 family, and 2290 vouchers. Software developers must follow these specific guidelines to produce scannable vouchers strictly for lockbox purposes. Also see *Exhibit C*.

- The total depth must be 3.25 inches.
- The scan line must be .5 inches from the bottom edge and 1.75 inches from the left edge of the voucher and left-justified.
- Software developers vouchers must be 8.5 inches wide (instead of 8 inches with a cut line). Therefore, no vertical cut line is required.
- Scan line positioning must be exact.
- Do not use the over-the-counter format voucher and add the scan line to it.
- All scanned data must be in 12-point OCR A font.
- The 4-digit NACTP ID code should be placed under the payment indicator arrow.
- Windowed envelopes must not display the scan line in order to avoid disclosure and privacy issues.

Note. All software developers must ensure that their software uses OCR A font so taxpayers will be able to print the vouchers in the correct font.

2.3.8 Specific Line Positions

Follow these line specifications for entering taxpayer data in the lockbox vouchers.

	Start Row	Start Column	Width	End Column
Line Specifications for Taxpayer Data:				
Taxpayer Name	56	6	6	41
Taxpayer Address, Apt.	57	6	36	41
Taxpayer City, State, ZIP	58	6	36	41
Foreign Country Name	59	6	36	41
Foreign Province/ Country	60	6	17	22
Foreign Postal Code	60	26	16	41
Line Specifications for Mail To Data:				
Mail Name	56	43	38	80
Mail Address	57	43	38	80
Mail City, State, ZIP	58	43	38	80
Line Specifications for:				
Scan Line	63	26	n/a	n/a

2.3.9 How to Get Approval

To receive approval, please send in 25 voucher samples yearly for each form type or scenarios, by December 10, for testing to the following address.

Internal Revenue Service
Attn: Doris Bethea, C5-226
5000 Ellin Road
Lanham, MD 20706

For further information, contact Doris Bethea, Doris.E.Bethea@irs.gov, at 202-283-0218.

Section 2.4 — Restrictions on Changes

2.4.1 What You Cannot Do to Forms Suitable for Substitute Tax Forms

You cannot, without prior IRS approval, change any IRS tax form or use your own (non-approved) versions including graphics, unless specifically permitted by this revenue procedure. See *Sections 2.5.7 to 2.5.11*.

You cannot adjust any of the graphics on Forms 1040, 1040A, and 1040EZ (except in those areas specified in *Part 5* of this revenue procedure) without prior approval from the IRS Substitute Forms Unit.

Note. The 20-day turnaround policy may not apply to extensive changes.

Section 2.5 — Guidelines for Obtaining IRS Approval

2.5.1 Basic Requirements

Preparers who submit substitute privately designed, privately printed, computer generated, or computer prepared tax forms must develop these substitutes using the guidelines established in this part. These forms, unless there is an exception outlined by the revenue procedure, must be approved by the IRS before being filed.

2.5.2 Conditional Approval Based on Advanced Drafts

The IRS cannot grant final approval of your substitute form until the official form has been published. However, the IRS posts advance draft forms on its website at:

<http://www.irs.gov/app/picklist/list/draftTaxForms.html>.

We encourage submission of proposed substitutes of these advance draft forms and will grant conditional approval based solely on these early drafts. These advance drafts are subject to significant change before forms are finalized. If these advance drafts are used as the basis for your substitute forms, you will be responsible for subsequently updating your final forms to agree with the final official version. These revisions need not be resubmitted for further approval.

Note. Approval of forms based on advance drafts will not be granted after the final version of an official form is published.

2.5.3 Submission Procedures

Follow these general guidelines when submitting substitute forms for approval.

- Any alteration of forms must be within the limits acceptable to the IRS. It is possible that, from one filing period to another, a change in law or a change in internal need (processing, audit, compliance, etc.) may change the allowable limits for the alteration of the official form.
 - When approval of any substitute form (other than those exceptions specified in Part 1, *Section 1.2 — IRS Contacts*) is requested, a sample of the proposed substitute form should be forwarded for consideration via email or by letter to the Substitute Forms Unit at the address shown in *Section 1.2.1*.
 - Schedules and forms (for example, Forms 3468, 4136, etc.) that can be used with more than one type of return (for example, 1040, 1041, 1120, etc.) should be submitted only once for approval, regardless of the number of different tax returns with which they may be associated. Also, all pages of multi-page forms or returns should be submitted in the same package.
-

2.5.4 Approving Offices

Because only the Substitute Forms Unit is authorized to approve substitute forms, unnecessary delays may occur if forms are sent to the wrong office. You may receive an interim letter about the delay. The Substitute Forms Unit may then coordinate the response with the originator responsible for revising that particular form. Such coordination may include allowing the originator to officially approve the form. No IRS office is authorized to allow deviations from this revenue procedure.

2.5.5 IRS Review of Software Programs, etc.

The IRS does not review or approve the logic of specific software programs, nor does the IRS confirm the calculations on the forms produced by these programs. The accuracy of the program remains the responsibility of the software package developer, distributor, or user.

The Substitute Forms Unit is primarily concerned with the pre-filing quality review of the final forms that are expected to be processed by IRS field offices. For this purpose, you should submit forms without including any taxpayer information such as names, addresses, monetary amounts, etc.

2.5.6 When To Send Proposed Substitutes

Proposed substitutes, which are required to be submitted per this revenue procedure, should be sent as much in advance of the filing period as possible. This is to allow adequate time for analysis and response.

2.5.7 Accompanying Statement

When submitting sample substitutes, you should include an accompanying statement that lists each form number and its changes from the official form (position, arrangement, appearance, line numbers, additions, deletions, etc.). With each of the items you should include a detailed reason for the change.

When requesting approval, please include a check sheet. Check sheets expedite the approval process. The check sheet may look like the example in Exhibit D displayed in the back of this procedure or may be one of your own design. Please include your fax number and email address on the check sheet.

2.5.8 Approval/Non-Approval Notice

The Substitute Forms Unit will fax or email the check sheet or an approval letter to the originator if a fax number has been provided, unless:

- The requester has asked for an email response or for a formal letter, or
- Significant corrections to the submitted forms are required.

Notice of approval may impose qualifications before using the substitutes. Notices of unapproved forms may specify the changes required for approval and require re-submission of the form(s) in question. When appropriate, you will be contacted by telephone.

2.5.9 Duration of Approval

Most signature tax returns and many of their schedules and related forms have the tax (liability) year printed in the upper right corner. Approvals for these annual forms are usually good for one calendar year (January through December of the year of filing). Quarterly tax forms in the 94X series and Form 720 require approval for any quarter in which the form has been revised.

Because changes are usually made to an annual form every year, each new filing season generally requires a new submission of a substitute form. Very rarely is updating the preprinted year the only change made to an annual form.

2.5.10 Limited Continued Use of an Approved Change

Limited changes approved for one tax year may be allowed for the same form in the following tax year. Examples are the use of abbreviated words, revised form spacing, compressed text lines, and shortened captions, etc., which do not change the integrity of lines or text on the official forms.

If substantial changes are made to the form, new substitutes must be submitted for approval. If only minor editorial changes are made to the form, it is not subject to review. It is the responsibility of each vendor who has been granted permission to use substitute forms to monitor and revise forms to mirror any revisions to official forms made by the Service. If there are any questions, please contact the Substitute Forms Unit.

2.5.11 When Approval Is Not Required

If you received approval for a specific change on a form last year, you may make the same change this year if the item is still present on the official form.

- The new substitute form does not have to be submitted to the IRS and approval based on that change is not required.
- However, the new substitute form must conform to the official current year IRS form in other respects: date, Office of Management and Budget (OMB) approval number, attachment sequence number, Paperwork Reduction Act Notice statement, arrangement, item caption, line number, line reference, data sequence, etc.
- The new substitute form must also comply with changes to the guidelines in this revenue procedure. The procedure may have eliminated, added to, or otherwise changed the guideline(s) that affected the change approved in the prior year.

- An approved change is authorized only for the period from a prior tax year substitute form to a current tax year substitute form.

Exception. Forms with temporary, limited, or interim approvals (or with approvals that state a change is not allowed in any other tax year) are subject to review in subsequent years.

2.5.12 Continuous-Use Forms

Forms without preprinted tax years are called “continuous-use” forms. Continuous-use forms are revised when a legislative change affects the form or a change will facilitate processing. These forms frequently have revision dates that are valid for longer than one year.

2.5.13 Required Copies

Generally, you must send us one copy of each form being submitted for approval. However, if you are producing forms for different computer systems (for example, Microsoft compatible vs. Apple) or different types of printers and these forms differ **significantly** in appearance, submit one copy for each type of system or printer.

2.5.14 Requestor’s Responsibility

Following receipt of an initial approval for a substitute forms package or a software output program to print substitute forms, it is the responsibility of the originator (designer or distributor) to provide client firms or individuals with forms that meet the IRS’s requirements for continuing acceptability. Examples of this responsibility include:

- Using the prescribed print paper, font size, legibility, state tax data deletion, etc., and
 - Informing all users of substitute forms of the legal requirements of the Paperwork Reduction Act Notice, which is generally found in the instructions for the official IRS forms.
-

2.5.15 Source Code

The Substitute Forms Unit will assign a unique source code to each firm that submits substitute paper forms for approval. This source code will be a permanent identifier that must be used on every submission by a particular firm.

The source code consists of three alpha characters and should generally be printed at the bottom left margin area on the first page of every approved substitute form.

Section 2.6 — Office of Management and Budget (OMB) Requirements for All Substitute Forms

2.6.1 OMB Requirements for All Substitute Forms

There are legal requirements of the Paperwork Reduction Act of 1995 (The Act). Public Law 104–13 requires the following.

- OMB approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in the upper right corner) the OMB number, if assigned.
- Each IRS form (or its instructions) states why the IRS needs the information, how it will be used, and whether or not the information is required to be furnished to the IRS.

This information must be provided to every user of official or substitute IRS forms or instructions.

2.6.2 Application of the Paperwork Reduction Act

On forms that have been assigned OMB numbers:

- All substitute forms must contain in the upper right corner the OMB number that is on the official form, and
- The required format is: OMB No. 1545–XXXX (Preferred) or OMB # 1545–XXXX (Acceptable).

2.6.3 Required Explanation to Users

You must inform the users of your substitute forms of the IRS use and collection requirements stated in the instructions for official IRS forms.

- If you provide your users or customers with the official IRS instructions, each form must retain either the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice), or a reference to it as the IRS does on the official forms (usually in the lower left corner of the forms).
- This notice reads, in part, “We ask for tax return information to carry out the tax laws of the United States....”

Note. If no IRS instructions are provided to users of your forms, the exact text of the Paperwork Reduction Act Notice (or Disclosure, Privacy Act, and Paperwork Reduction Act Notice) must be furnished separately or on the form.

2.6.4 Finding the OMB Number and Paperwork Reduction Act Notice

The OMB number and the Paperwork Reduction Act Notice, or references to it, may be found printed on an official form (or its instructions). The number and the notice are included on the official paper format and in other formats produced by the IRS (for example, DVD (Publication 1796) or IRS.gov download).

Part 3 Physical Aspects and Requirements

Section 3.1 — General Guidelines for Substitute Forms

3.1.1 General Information

The official form is the standard. Because a substitute form is a variation from the official form, you should know the requirements of the official form for the year of use before you modify it to meet your needs. The IRS provides several means of obtaining the most frequently used tax forms. These include IRS.gov and the IRS tax products DVD (see *Part 4*).

3.1.2 Design

Each form must follow the design of the official form as to format arrangement, item caption, line numbers, line references, and sequence.

3.1.3 State Tax Information Prohibited

Generally, state tax information must not appear on the federal tax return, associated form, or schedule that is filed with the IRS. Exceptions occur when amounts are claimed on, or required by, the federal return (for example, state and local income taxes, on Schedule A of Form 1040).

3.1.4 Vertical Alignment of Amount Fields

IF a form is to be...	THEN...
Manually prepared	1. The entry column must have a vertical line or some type of indicator in the amount field to separate dollars from cents. 2. The cents column must be at least 3/10" wide.
Computer generated	1. Vertically align the amount entry fields where possible. 2. Use one of the following amount formats: a) 0,000,000, or b) 0,000,000.00.
Computer prepared	1. You may remove the vertical line in the amount field that separates dollars from cents. 2. Use one of the following amount formats: a) 0,000,000, or b) 0,000,000.00.

3.1.5 Attachment Sequence Number

Many individual income tax forms have a required “attachment sequence number” located just below the year designation in the upper right corner of the form. The IRS uses this number to indicate the order in which forms are to be attached to the tax return for processing. Some of the attachment sequence numbers may change from year to year.

The following applies to computer prepared forms.

- The sequence number may be printed in no less than 12-point boldface type and centered below the form’s year designation.
 - The sequence number may also be placed following the year designation for the tax form and separated with an asterisk.
 - The actual number may be printed without labeling it the “Attachment Sequence Number.”
-

3.1.6 Assembly of Forms

When developing software or forms for use by others, please inform your customers/clients that the order in which the forms are arranged may affect the processing of the package. A return must be arranged in the order indicated below.

IF the form is...	THEN the sequence is...
1040	<ul style="list-style-type: none">• Form 1040, and• Schedules and forms in attachment sequence number order.
Any other tax return (Form 1120, 1120S, 1065, 1041, etc.)	<ul style="list-style-type: none">• The tax returns,• Directly associated schedules (Schedule D, etc.),• Directly associated forms,• Additional schedules in alphabetical order, and• Additional forms in numerical order.

Supporting statements should then follow in the same sequence as the forms they support. Additional information required should be attached last.

In this way, the forms are received in the order in which they must be processed. If you do not send returns to the IRS in order, processing may be delayed.

3.1.7 Paid Preparer’s Information and Signature Area

On Forms 1040EZ, 1040A, 1040, and 1120, etc., the “Paid Preparer Use Only” area may not be rearranged or relocated. You may, however, add three extra lines to the paid preparer’s address area without prior approval. This applies to other tax forms as well.

3.1.8 Some Common Reasons for Requiring Changes to Substitute Forms

Some reasons that substitute form submissions may require changes include the following.

- Failing to preprint certain amounts in entry spaces.
 - Shading areas incorrectly.
 - Failing to include a reference to the location of the Paperwork Reduction Act Notice.
 - Not including parentheses for losses.
 - Not including “Attach Statement” when appropriate.
 - Including line references or entry spaces that don’t match the official form.
 - Printing text that is different from the official form.
 - Altering the jurat (perjury statement).
-

Section 3.2 — Paper

3.2.1 Paper Content

The paper must be:

- Chemical wood writing paper that is equal to or better than the quality used for the official form,
- At least 18 pound (17" x 22", 500 sheets), or
- At least 50 pound offset book (25" x 38", 500 sheets).

3.2.2 Paper with Chemical Transfer Properties

There are several kinds of paper prohibited for substitute forms. These are:

- (1) Carbon-bonded paper, and
 - (2) Chemical transfer paper except when the following specifications are met:
 - (a) Each ply within the chemical transfer set of forms must be labeled, and
 - (b) Only the top ply (ply one and white in color), the one that contains chemical on the back only (coated back), may be filed with the IRS.
-

3.2.3 Example

A set containing three plies would be constructed as follows: ply one (coated back), “Federal Return, File with IRS”; ply two (coated front and back), “Taxpayer’s copy”; and ply three (coated front), “Preparer’s copy.”

The file designation, “Federal Return, File with IRS” for ply one, must be printed in the bottom right margin (just below the last line of the form) in 12-point boldface type.

It is not mandatory, but recommended, that the file designation “Federal Return, File with IRS” be printed in a contrasting ink for visual emphasis.

3.2.4 Paper and Ink Color

It is preferred that the color and opacity of paper substantially duplicates that of the original form. This means that your substitute must be printed in black ink and may be on white or on the colored paper the IRS form is printed on. Forms 1040A and 1040 substitute reproductions may be in black ink without the colored shading. The only exception to this rule is Form 1041-ES, which should be printed with a PMS 100 yellow shading in the color screened area. This is necessary to assist us in expeditiously separating this form from the very similar Form 1040-ES.

3.2.5 Page Size

Substitute or reproduced forms and computer prepared/generated substitutes may be the same size as the official form or they may be the standard commercial size (8 1/2" x 11"). The thickness of the stock cannot be less than .003 inches.

Section 3.3 — Printing

3.3.1 Printing Medium

The private printing of all substitute tax forms must be by conventional printing processes, photocopying, computer graphics, or similar reproduction processes.

3.3.2 Legibility

All forms must have a high standard of legibility as to printing, reproduction, and fill-in matter. Entries of taxpayer data may be no smaller than eight points. The IRS reserves the right to reject those with poor legibility. The ink and printing method used must ensure that no part of a form (including text, graphics, data entries, etc.) develops “smears” or similar quality deterioration. This standard must be followed for any subsequent copies or reproductions made from an approved master substitute form, either during preparation or during IRS processing.

3.3.3 Type Font

Many federal tax forms are printed using “Helvetica” as the basic type font. It is preferred that you use this type font when composing substitute forms.

3.3.4 Print Spacing

Substitute forms should be printed using a 6 lines/inch vertical print option. They should also be printed horizontally in 10 pitch pica (that is, 10 print characters per inch) or 12 pitch elite (that is, 12 print positions per inch).

3.3.5 Image Size

The image size of a printed substitute form should be as close as possible to that of the official form. You may omit any text on both computer prepared and computer generated forms that is solely instructional.

3.3.6 Title Area Changes

To allow a large top margin for marginal printing and more lines per page, the title line(s) for all substitute forms (not including the form's year designation and sequence number, when present), may be photographically reduced by 40 percent or reset as one line of type. When reset as one line, the type size may be no smaller than 14-point. You may omit "Department of the Treasury—Internal Revenue Service" and all reference to instructions in the form's title area.

3.3.7 Remove Government Printing Office Symbol and IRS Catalog Number

When privately printing substitute tax forms, the Government Printing Office (GPO) symbol and/or jacket number must be removed. In the same place using the same type size, print the Employer Identification Number (EIN) of the printer or designer or the IRS assigned source code. (We prefer this last number be printed in the lower left area of the first page of each form.) Also, remove the IRS Catalog Number (Cat. No.) and the recycle symbol if the substitute is not produced on recycled paper.

3.3.8 Printing on One Side of Paper

Even though the IRS uses both sides of the paper for printing official paper forms or schedules, the IRS will accept your forms if only one side of the paper is used.

3.3.9 Photocopy Equipment

The IRS does not undertake to approve or disapprove the specific equipment or process used in reproducing official forms. Photocopies of forms must be entirely legible and satisfy the conditions stated in this and other revenue procedures.

3.3.10 Reproductions

Reproductions of official forms and substitute forms that do not meet the requirements of this revenue procedure may not be filed instead of the official forms. Illegible photocopies are subject to being returned to the filer for re-submission of legible copies.

3.3.11 Removal of Instructions

Generally, you may remove references to instructions. No prior approval is needed. However in some instances, you may be requested to include references to instructions.

Exception. The words "For Paperwork Reduction Act Notice, see instructions" must be retained or a similar statement indicating the location of the Notice must be provided on each form.

Section 3.4 — Margins

3.4.1 Margin Size

The format of a reproduced tax form when printed on the page must have margins on all sides at least as large as the margins on the official form. This allows room for IRS employees to make necessary entries on the form during processing.

- A 1/2-inch to 1/4-inch margin must be maintained across the top, bottom, and both sides of all substitute forms.

- The marginal, perforated strips containing pin-fed holes must be removed from all forms prior to filing with the IRS.
-

3.4.2 Marginal Printing

Prior approval is not required for the marginal printing allowed when printed on an official form or on a photocopy of an official form.

- With the exception of the actual tax forms (for example, Forms 1040, 1040A, 1040EZ, 1120, 940, 941, etc.), you may print in the left vertical margin and in the left half of the bottom margin.
 - Printing is never allowed in the top right margin of the tax form (for example, Forms 1040, 1040A, 1040EZ, 1120, 940, 941, etc.). The Service uses this area to imprint a Document Locator Number for each return. There are no exceptions to this requirement.
-

Section 3.5 — Examples of Approved Formats

3.5.1 Examples of Approved Formats From the Exhibits

Two sets of exhibits (*Exhibits A-1 and 2; B-1 and 2*) at the end of this revenue procedure are examples of how these guidelines may be used. Vertical spacing is six (6) lines to the inch. A combination of upper-case and lower-case print font is acceptable in producing substitute forms.

The same logic may be applied to any IRS form that is normally reproducible as a substitute form, with the exception of the tax return forms as discussed elsewhere.

Note. These exhibits may be from a prior year and are not to be used as current substitute forms.

Section 3.6 — Miscellaneous Information for Substitute Forms

3.6.1 Filing Substitute Forms

To be acceptable for filing, a substitute form must print out in a format that will allow the filer to follow the same instructions that accompany official forms. The form must be legible, must be on the appropriately sized paper, and must include a jurat (perjury statement) where one appears on the published form.

3.6.2 Caution to Software Publishers

The IRS has received returns produced by software packages with approved output where either the form heading was altered or the lines were spaced irregularly. This produces an illegible or unrecognizable return or a return with the wrong number of pages. We realize that many of these problems are caused by individual printer differences but they may delay input of return data and, in some cases, generate correspondence to the taxpayer. Therefore, in the instructions to the purchasers of your product, both individual and professional, please stress that their returns will be processed more efficiently if they are properly formatted. This includes:

- Having the correct form numbers and titles at the top of the return, and
 - Submitting the same number of pages as if the form were an official IRS form with the line items on the proper pages.
-

3.6.3 Caution to Producers of Software Packages

If you are producing a software package that generates name and address data onto the tax return, do not under any circumstances program either the IRS preprinted check digits or a practitioner derived name control to appear on any return prepared and filed with the IRS.

3.6.4 Programming to Print Forms

Whenever applicable:

- Use only the following label information format for single filers: JOHN Q. PUBLIC 310 OAK DRIVE HOMETOWN, STATE 94000
 - Use only the following information for joint filers: JOHN Q. PUBLIC MARY I. PUBLIC 310 OAK DRIVE HOMETOWN, STATE 94000
-

Part 4 Additional Resources

Section 4.1 — Guidance From Other Revenue Procedures

4.1.1 General

The IRS publications listed below provide guidance for substitute tax forms not covered in this revenue procedure. These publications are available on the IRS website. Identify the requested document by the IRS publication number.

- Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.
 - Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.
 - Publication 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically.
 - Publication 1220, Specifications for Filing Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically.
 - Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.
 - Publication 1239, Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically.
 - Publication 1345, Handbook for Authorized IRS *e-file* Providers of Individual Income Tax Returns.
 - Publication 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941) and Schedule R (Form 941).
-

Section 4.2 — Electronic Tax Products

4.2.1 The IRS Website

Copies of tax forms with instructions, publications, draft forms, fillable forms, prior year forms and publications, and other tax-related information may be found on the IRS website at IRS.gov.

Section 4.3 — IRS Tax Products on DVD (Publication 1796)

4.3.1 Information About IRS Tax Products DVD

The DVD contains approximately 2,500 tax forms and publications for small businesses, return preparers, and others who frequently need current or prior year tax products. Most current tax forms on the DVD may be filled in electronically, then printed out for submission and saved for recordkeeping. Other products on the DVD include the Internal Revenue Bulletins, Tax Supplements, and Internet resources for the tax professional with links to the World Wide Web.

4.3.2 System Requirements and How To Order the IRS Tax Products DVD

For system requirements, contact the National Technical Information Service (NTIS) at <http://www.ntis.gov>. Prices are subject to change.

The cost of the DVD if purchased from NTIS via IRS.gov at <http://www.irs.gov/formspubs/article/0,,id=108660,00.html> is \$30 (with no handling fee).

If purchased using the following methods, the cost for each DVD is \$30 (plus a \$6 handling fee). These methods are:

- By phone — 1-877-CDFORMS (1-877-233-6767) — for IRS DVD purchase only,
- By fax — 703-605-6900 — for IRS DVD purchase only,
- By mail to:

National Technical Information Service
5301 Shawnee Road
Alexandria, VA 22312

Part 5 Requirements for Specific Tax Returns

Section 5.1 — Tax Returns (Forms 1040, 1040A, 1120, etc.)

5.1.1 Acceptable Forms

Tax forms (such as Forms 1040, 1040A, and 1120) require a signature and establish tax liability. Computer generated versions are acceptable under the following conditions.

- These substitute forms must be printed on plain white paper.
- Substitute forms must conform to the physical layout of the corresponding IRS form although the typeface may differ. The text should match the text on the officially published form as closely as possible. Condensed text and abbreviations will be considered on a case-by-case basis. **Caution.** All jurats (perjury statements) must be reproduced verbatim. No text can be added, deleted, or changed in meaning.
- Various computer graphic print media such as laser printing, inkjet printing, etc., may be used to produce the substitute forms.
- The substitute form must be the same number of pages and contain the same line text as the official form.
- All substitute forms must be submitted for approval prior to their original use. You do not need approval for a substitute form if its only change is the preprinted year and you had received a prior year approval letter.

Exception. If the approval letter specifies a one time exception for your form, the next year's form must be approved.

5.1.2 Prohibited Forms

The following are prohibited.

- Computer generated tax forms (for example, Form 1040, etc.) on lined or color barred paper.
 - Tax forms that differ from the official IRS forms in a manner that makes them non-standard or unable to process.
-

5.1.3 Changes Permitted to Forms 1040 and 1040A

Certain changes (listed in *Sections 5.2 through 5.4*) are permitted to the graphics of the form without prior approval, but these changes apply to only acceptable preprinted forms. Changes not requiring prior approval are good only for the annual filing period, which is the current tax year. Such changes are valid in subsequent years only if the official form does not change.

**5.1.4
Other Changes Not Listed**

All changes not listed in *Sections 5.2 through 5.4* require approval from the IRS before the form can be filed.

Section 5.2 — Changes Permitted to Graphics (Forms 1040A and 1040)

**5.2.1
Adjustments**

You may make minor vertical and horizontal spacing adjustments to allow for computer or word processing printing. This includes widening the amount columns or tax entry areas if the adjustments comply with other provisions stated in revenue procedures. No prior approval is needed for these changes.

**5.2.2
Name and Address Area**

The horizontal rules and instructions within the name and address area may be removed and the entire area left blank. No line or instruction can remain in the area. The heavy ruled border (when present) that outlines the name, address area, and social security number must not be removed, relocated, expanded, or contracted.

**5.2.3
Required Format**

When the name and address area is left blank, the following format must be used when printing the taxpayer's name and address.

- 1st name line (35 characters maximum).
 - 2nd name line (35 characters maximum).
 - In-care-of name line (35 characters maximum).
 - City, state (25 characters maximum), one blank character, and ZIP code.
-

**5.2.4
Conventional Name and Address
Data**

When there is no in-care-of name line, the name and address will consist of only three lines (single filer) or four lines (joint filer). Name and address (joint filer) with no in-care-of name line:

JOHN Z. JONES
MARY I. JONES
1234 ANYWHERE ST., APT. 111
ANYTOWN, STATE 12321

**5.2.5
Example of In-Care-Of Name
Line**

Name and address (single filer) with in-care-of name line:

JOHN Z. JONES
C/O THOMAS A. JONES
4311 SOMEWHERE AVE.
SAMETOWN, STATE 54345

**5.2.6
SSN and Employer Identification
Number (EIN) Area**

The broken vertical lines separating the format arrangement of the SSN/EIN may be removed. When the vertical lines are removed, the SSN and EIN formats must be 000-00-0000 or 00-0000000, respectively.

**5.2.7
Cents Column**

- You may remove the vertical rule that separates the dollars from the cents.
- All entries in the amount column should have a decimal point following the whole dollar amounts whether or not the vertical line that separates the dollars from the cents is present.
- You may omit printing the cents, but all amounts entered on the form must follow a consistent format. You are strongly urged to round off the figures to whole dollar amounts, following the official form instructions.

- When several amounts are summed together, the total should be rounded off after addition (that is, individual amounts should not be rounded off for computation purposes).
 - When printing money amounts, you must use one of the following formats: (a) 0,000,000.; (b) 0,000,000.00.
 - When there is no entry for a line, leave the line blank.
-

5.2.8
“Paid Preparer’s Use Only” Area

On all forms, the paid preparer’s information area may not be rearranged or relocated. You may add three lines and remove the horizontal rules in the preparer’s address area.

Section 5.3 — Changes Permitted to Form 1040A Graphics

5.3.1
General

No prior approval is needed for the following changes (for use with computer prepared forms only).

5.3.2
Line 4 of Form 1040A

This line may be compressed horizontally (to allow for same line entry for the name of the qualifying child) by using the following caption: “Head of household; child’s name” (name field).

5.3.3
Other Lines

Any line with text that takes up two or more vertical lines may be compressed to one line by using contractions, etc., and by removing instructional references.

5.3.4
Page 2 of Form 1040A

All lines must be present and numbered in the order shown on the official form. These lines may also be compressed.

5.3.5
Color Screening

It is not necessary to duplicate the color screening used on the official form. A substitute Form 1040A may be printed in black and white only with no color screening.

5.3.6
Other Changes Prohibited

No other changes to the Form 1040A graphics are allowed without prior approval except for the removal of instructions and references to instructions.

Section 5.4 — Changes Permitted to Form 1040 Graphics

5.4.1
General

No prior approval is needed for the following changes (for use with computer prepared forms only). Specific line numbers in the following headings may have changed due to tax law changes.

5.4.2
Line 4 of Form 1040

This line may be compressed horizontally (to allow for a larger entry area for the name of the qualifying child) by using the following caption: “Head of household; child’s name” (name field).

5.4.3
Line 6c of Form 1040

The vertical lines separating columns (1) through (4) may be removed. The captions may be shortened to allow a one line caption for each column.

5.4.4
Other Lines

Any other line with text that takes up two or more vertical lines may be compressed to one line by using contractions, etc., and by removing instructional references.

5.4.5
Line 21 — Other Income

The fill-in portion of this line may be expanded vertically to three lines. The amount entry box must remain a single entry.

5.4.6
Line 44 of Form 1040 — Tax

You may change the line caption to read “Tax” and computer print the words “Total includes tax from” and either “Form(s) 8814” or “Form 4972” or “962 election.” If both forms are used, print both form numbers. This specific line number may have changed.

5.4.7
Line 53 of Form 1040 — Other Credits

You may change the caption to read: “Other credits from Form” and computer print only the form(s) that apply.

5.4.8
Color Screening

It is not necessary to duplicate the color screening used on the official form. A substitute Form 1040 may be printed in black and white only with no color screening.

5.4.9
Other Changes Prohibited

No other changes to the Form 1040 graphics are permitted without prior approval except for the removal of instructions and references to instructions.

Part 6

Format and Content of Substitute Returns

Section 6.1 — Acceptable Formats for Substitute Forms and Schedules

6.1.1
Exhibits and Use of Acceptable Formats

Exhibits of acceptable formats for Schedule A, usually attached to the Form 1040, and Form 2106-EZ are shown in the exhibits section of this revenue procedure.

- If your computer generated forms appear exactly like the exhibits, no prior authorization is needed.
 - You may computer generate forms not shown here, but you must design them by following the manner and style of those in the exhibits section.
 - Take care to observe other requirements and conditions in this revenue procedure. The IRS encourages the submission of all proposed forms covered by this revenue procedure.
-

6.1.2
Instructions

The format of each substitute form or schedule must follow the format of the official form or schedule as to item captions, line references, line numbers, sequence, form arrangement and format, etc. Basically, try to make the form look like the official one, with readability and consistency being primary factors. You may use periods and/or other similar special characters to separate the various parts and sections of the form. Do not use alpha or numeric characters for these purposes. All line numbers and items must be printed even though an amount is not entered on the line.

6.1.3
Line Numbers

When a line on an official form is designated by a number or a letter, that designation (reference code) must be used on a substitute form. The reference code must be printed to the left of the text of each line and immediately preceding the data entry field, even if no reference code precedes the data entry field on the official form. If an entry field contains multiple lines and shows the line references once on the left and right side of the form, use the same number of line references on the substitute form.

In addition, the reference code that is immediately before the data field must either be followed by a period or enclosed in parentheses. There also must be at least two blank spaces between the period or the right parenthesis and the first digit of the data field. (See Section 6.1.4.)

6.1.4 Decimal Points

A decimal point (that is, a period) should be used for each money amount regardless of whether the amount is reported in dollars and cents or in whole dollars, or whether or not the vertical line that separates the dollars from the cents is present. The decimal points must be vertically aligned when possible.

Example:

5	STATE & LOCAL INC. TAXES.....	5.	495.00
6	REAL ESTATE TAXES	6.	
7	PERSONAL PROPERTY TAXES	7.	198.00
5	or STATE & LOCAL INC. TAXES	(5)	495.00
6	REAL ESTATE TAXES	(6)	
7	PERSONAL PROPERTY TAXES	(7)	198.00

6.1.5 Multi-Page Forms

When submitting a multi-page form, send all its pages in the same package.

Exception. If you will not be producing certain pages, please note that in your cover letter.

Section 6.2 — Additional Instructions for All Forms

6.2.1 Use of Your Own Internal Control Numbers and Identifying Symbols

You may show the computer prepared internal control numbers and identifying symbols on the substitute if using such numbers or symbols is acceptable to the taxpayer and the taxpayer's representative. Such information must not be printed in the top 1/2 inch clear area of any form or schedule requiring a signature. Except for the actual tax return form (Forms 1040, 111D Number on 20, 940, 941, etc.), you may print in the left vertical and bottom left margins. The bottom left margin you may use extends 3 1/2 inches from the left edge of the form.

6.2.2 Required Software ID Number (Source Code) on Computer Prepared Substitutes

In the February 2009 Government Accountability Office (GAO) report, "Many Taxpayers Rely on Tax Software and IRS Needs to Assess Associated Risks" (GAO-09-297), GAO recommended that IRS require a software identification number on all individual returns to specifically identify the software package used to prepare each tax return. IRS already has this capability for all e-filed returns. In addition, many tax preparation software firms already print an IRS-issued 3-letter Source Code on paper returns that are generated by their individual tax software. This Source Code was assigned when the firms were seeking substitute forms approval under Publication 1167 (this publication).

In order to respond properly to this GAO recommendation, the IRS will require all tax preparation software firms to include the 3-letter Source Code on all paper tax returns created by their individual tax preparation software. The many firms that currently have and display their Source Code on paper returns generated from their software should continue to do so, and no change is necessary.

We have reviewed all software companies that passed PATS testing last filing season and have determined that some firms do not currently have a Source Code. To save you the burden of contacting us and for your convenience, we have assigned Source Codes to those firms.

You should program your Source Code to be placed in the bottom left hand corner of page one of each paper form that will be generated by your individual tax return package. You do not need to apply for a new Source Code annually.

If you already use a 3-letter Source Code and we have issued you one in error, you are unsure if you were ever issued one, or have other questions or concerns, you may contact Tax Forms and Publications Special Services Section at substituteforms@irs.gov.

6.2.3
Descriptions for Captions, Lines, etc.

Descriptions for captions, lines, etc., appearing on the substitute forms may be limited to one print line by using abbreviations and contractions, and by omitting articles, prepositions, etc. However, sufficient key words must be retained to permit ready identification of the caption, line, or item.

6.2.4
Determining Final Totals

Explanatory detail and/or intermediate calculations for determining final line totals may be included on the substitute. We prefer that such calculations be submitted in the form of a supporting statement. If intermediate calculations are included on the substitute, the line on which they appear may not be numbered or lettered. Intermediate calculations may not be printed in the right column. This column is reserved only for official numbered and lettered lines that correspond to the ones on the official form. Generally, you may choose the format for intermediate calculations or subtotals on supporting statements to be submitted.

6.2.5
Instructional Text on the Official Form

Text on the official form, which is solely instructional (for example, “See instructions.” etc.), may generally be omitted from the substitute form.

6.2.6
Mixing Forms on the Same Page Prohibited

You may not show more than one form or schedule on the same printout page. Both sides of the paper may be printed for multi-page official forms, but it is unacceptable to intermix single page schedules of forms.

For instance, Schedule E can be printed on both sides of the paper because the official form is multi-page, with page 2 continued on the back. However, do not print Schedule E on the front page and Schedule SE on the back, or Schedule A on the front and Form 8615 on the back, etc. Both pages of a substitute form must match the official form. The back page may be left blank if the back page of the official form contains only the instructions.

6.2.7
Identifying Substitutes

Identify all computer prepared substitutes clearly. Print the form designation 1/2 inch from the top margin and 1 1/2 inches from the left margin. Print the title centered on the first line of print. Print the taxable year and, where applicable, the sequence number on the same line 1/2 inch to 1 inch from the right margin. Include the taxpayer’s name and SSN on all forms and attachments. Also, print the OMB number as reflected on the official form.

6.2.8
Negative Amounts

Negative (or loss) amount entries should be enclosed in brackets or parentheses or include a minus sign. This assists in accurate computation and input of form data. The IRS pre-prints parentheses in negative data fields on many official forms. These parentheses should be retained or inserted on printouts of affected substitute forms.

Part 7

Miscellaneous Forms and Programs

Section 7.1 — Specifications for Substitute Schedules K-1

7.1.1 Requirements for Schedules K-1 That Accompany Forms 1041, 1065, 1065-B, and 1120S

Because of significant changes to improve processing, prior approval is now required for substitute Schedules K-1 that accompany Form 1041 (for estates and trusts), Form 1065 (for partnerships), Form 1065-B (for electing large partnerships), or Form 1120S (for S corporations). Substitute Schedules K-1 should be as close as possible to exact replicas of copies of the official IRS schedules and follow the same process for submitting other substitute forms and schedules. Before releasing their substitute forms, software vendors are responsible for making any subsequent changes that have been made to the final official IRS forms after the draft forms have been posted.

You must include all information on the form. Submit Schedules K-1 to the IRS at *substituteforms@irs.gov* with “Attn: PDF Submissions” on the subject line or at:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:M:S
1111 Constitution Avenue, NW
Room 6526
Washington, DC 20224

Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120S. Please allow white space around the 6-digit code.

- 661112 for Form 1041,
- 651112 for Form 1065, and
- 671112 for Form 1120S.

Schedules K-1 that accompany Forms 1041, 1065, 1065-B, or 1120S must meet all specifications. The specifications include, but are not limited to, the following requirements.

- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- The words “*See attached statement for additional information.” must be preprinted in the lower right hand side on Schedules K-1 of Forms 1041, 1065, and 1120S.
- All K-1s that are filed with the IRS should be printed on standard 8.5” x 11” paper (the international standard (A4) of 8.27” x 11.69” may be substituted).
- Each recipient’s information must be on a separate sheet of paper. Therefore, you must separate all continuously printed substitutes, by recipient, before filing with the IRS.
- No carbon copies or pressure-sensitive copies will be accepted.
- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity (estate, trust, partnership, or S corporation) and the recipient (beneficiary, partner, or shareholder).
- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, 1065-B, or 1120S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.
- The Schedule K-1 must contain all the line items as shown on the official form, except for the instructions, if any are printed on the back of the official Schedule K-1.
- The line items or boxes must be in the same order and arrangement as those on the official form.
- The amount of each recipient’s share of each item must be shown. Furnishing a total amount of each item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.
- State or local tax-related information may not be included on the Schedules K-1 filed with the IRS.

- The entity may have to pay a penalty if substitute Schedules K-1 are filed that do not conform to specifications.
- Additionally, the IRS may consider the Schedules K-1 that do not conform to specifications as not being able to be processed and may return Forms 1041, 1065, 1065-B, or 1120S to the filer to be filed correctly.

Schedules K-1 that are 2-D bar-coded will continue to require prior approval from the IRS (see *Sections 7.1.3 through 7.1.5*).

7.1.2

Special Requirements for Recipient Copies of Schedules K-1

Standardization for reporting information is required for recipient copies of substitute Schedules K-1 of Forms 1041, 1065, 1065-B, and 1120S. Uniform visual standards are provided to increase compliance by allowing recipients and practitioners to more easily recognize a substitute Schedule K-1. The entity must furnish to each recipient a copy of Schedule K-1 that meets the following requirements.

- Include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120S. Please allow white space around the 6-digit code.
 - 661112 for Form 1041,
 - 651112 for Form 1065, and
 - 671112 for Form 1120S.
- You will no longer be able to produce Schedules K-1 that contain only those lines or boxes that taxpayers are required to use. All lines must be included.
- Both pages 1 and 2 of Schedules K-1 of Forms 1065 and 1120S must be provided to each recipient.
- The words “*See attached statement for additional information.” must be preprinted in the lower right hand side on Schedules K-1 of Forms 1041, 1065, and 1120S.
- The Schedule K-1 must contain the name, address, and SSN or EIN of both the entity and recipient.
- The Schedule K-1 must contain the tax year, the OMB number, the schedule number (K-1), the related form number (1041, 1065, 1065-B, or 1120S), and the official schedule name in substantially the same position and format as shown on the official IRS schedule.
- All applicable amounts and information required to be reported must be titled and numbered in the same manner as shown on the official IRS schedule. The line items or boxes must be in the same order and arrangement and must be numbered like those on the official IRS schedule.
- The Schedule K-1 must contain all items required for use by the recipient. The instructions to the schedule must identify the line or box number and code, if any, for each item as shown in the official IRS schedule.
- The amount of each recipient’s share of each item must be shown. Furnishing a total amount of each line item and a percentage (or decimal equivalent) to be applied to such total amount by the recipient does not satisfy the law and the specifications of this revenue procedure.
- Instructions to the recipient that are substantially similar to those on or accompanying the official IRS schedule must be provided to aid in the proper reporting of the items on the recipient’s income tax return. Where items are not reported to a recipient because they do not apply, the related instructions may be omitted.
- The quality of the ink or other material used to generate recipients’ schedules must produce clearly legible documents. In general, black chemical transfer inks are preferred.
- In order to assure uniformity of substitute Schedules K-1, the paper size should be standard 8.5” x 11” (the international standard (A4) of 8.27” x 11.69” may be substituted.)
- The paper weight, paper color, font type, font size, font color, and page layout must be such that the average recipient can easily decipher the information on each page.
- State or local tax-related information may be included on recipient copies of substitute Schedules K-1. All non-tax-related information should be separated from the tax information on the substitute schedule to avoid confusion for the recipient.
- The legend “Important Tax Return Document Enclosed” must appear in a bold and conspicuous manner on the outside of the envelope that contains the substitute recipient copy of Schedule K-1.

- The entity may have to pay a penalty if a substitute Schedule K-1 furnished to any recipient does not conform to the specifications of this revenue procedure and results in impeding processing.

7.1.3 Requirements for Schedules K-1 with Two-Dimensional (2-D) Bar Codes

Electronic filing is now and will continue to be the preferred method of filing; however, 2-D bar code is the best alternative method for paper processing.

In an effort to improve efficiency and at the same time increase data accuracy, the IRS partnered with the tax software development community on a two-dimensional bar code project in 2003. Certain tax software packages have been modified to generate 2-D bar codes on Schedules K-1. As a result, when K-1's are printed using these programs, a bar code will print on the page.

Rather than manually transcribe information from the Schedule K-1, the IRS will scan the bar code and electronically upload the information from the K-1. The results will be more efficient operation within the IRS and fewer transcription errors for your clients.

Note. If software vendors do not want to produce bar-coded Schedules K-1, they may produce the official IRS Schedules K-1 but cannot use the expedited process for approving bar-coded K-1s and their parent returns as outlined in *Section 7.1.6*.

In addition to the requirements in Sections 7.1.1 and 7.1.2, the bar-coded Schedules K-1 must meet the following specifications.

- The bar code should print in the space labeled “For IRS Use Only” on each Schedule K-1. The entire bar code must print within the “For IRS Use Only” box surrounded by a white space of at least 1/4 inch.
- Bar codes must print in PDF 417 format.
- The bar codes must always be in the specified format with every field represented by at least a field delimiter (carriage return). Leaving out a field in a bar code will cause every subsequent field to be misread.
- Be sure to include the 6-digit form ID code in the upper right of Schedules K-1 of Forms 1041, 1065, and 1120S. Please allow white space around the 6-digit code.
 - 661112 for Form 1041,
 - 651112 for Form 1065, and
 - 671112 for Form 1120S.

7.1.4 2-D Bar Code Specifications for Schedules K-1

Follow these general specifications for preparing all 2-D bar-coded Schedules K-1.

- Numeric fields —
 - Do not include leading zeros (except Taxpayer Identification Numbers, Zip Codes, and percentages).
 - If negative value, the minus sign “-” must be present immediately to the left of the number and part of the 12 position field.
 - Do not use non-numeric characters except that the literal “STMT” can be put in money fields.
 - All money fields should be rounded to the nearest whole dollar amount — If a money amount ends in 00 to 49 cents, drop the cents; if it ends in 50 to 99 cents, truncate the cents and increment the dollar amount by one. Use the same rounding technique for the bar-coded and the printed K-1s.
 - All numeric-only fields are right justified (except Taxpayer Identification Numbers and Zip Codes).
- All field lengths are expressed as maximum lengths. If the value in the field has fewer positions or the software program does not support that many positions, put in the bar code only those positions actually used.
- Alpha fields —
 - Do not include leading blanks (left justified).
 - Do not include trailing blanks.

- Use uppercase alpha characters only.
 - Variable fields —
 - Do not include leading blanks (left justified).
 - Do not include trailing blanks.
 - Use uppercase alpha characters, numerics, and special characters as defined in each field.
 - Delimit each field with a carriage return.
 - Express percentages as 6-digit numbers without the percent sign. Left justify with leading zero(s) (for percentages less than 100%) and no decimal point (decimal point is assumed between 3rd and 4th positions). Examples: 25.32% expressed as “025320”; 105% expressed as “105000”; 8.275% expressed as “008275”; 10.24674% expressed as “010247”.
 - It is vital that the print routine reinitialize the bar code prior to printing each succeeding K-1. Failure to do this will result in each K-1 for a parent return having the same bar code as the document before it.
-

7.1.5

Approval Process for Bar-Coded Schedules K-1

Prior to releasing commercially available tax software that creates bar-coded Schedules K-1, the printed schedule and the bar code must both be tested. If your company is creating bar coded Schedules K-1, you must receive certification for both the printed K-1, as well as the bar code before offering your product for sale. Bar code testing must be done using the final official IRS Schedule K-1. Bar code approval requests must be resubmitted for any subsequent changes to the official IRS form that would affect the bar code. Below are instructions and a sequence of events that will comprise the testing process.

- The IRS has released the final Schedule K-1 bar-code specifications by publishing them on the IRS.gov website (see <http://www.irs.gov/uac/Schedule-K-1,-Two-Dimensional-Bar-Code-Specification-and-Certification-Process>).
 - The IRS will publish a set of test documents that will be used to test the ability of tax preparation software to create bar codes in the correct format.
 - Software developers will submit two identical copies of the test documents — one to the IRS and one to a contracted testing vendor.
 - The IRS will use one set to ensure the printed schedules comply with standard substitute forms specifications.
 - If the printed forms fail to meet the substitute form criteria, the IRS will inform the software developer of the reason for noncompliance.
 - The software developer must resubmit the Schedule(s) K-1 until they pass the substitute forms criteria.
 - The testing vendor will review the bar codes to ensure they meet the published bar-code specifications.
 - If the bar code(s) does not meet published specifications, the testing vendor will contact the software developer directly informing them of the reason for noncompliance.
 - Software developers must submit new bar-coded schedules until they pass the bar-code test.
 - When the bar code passes, the testing vendor will inform the IRS that the developer has passed the bar-code test and the IRS will issue an overall approval for both the substitute form and the bar code.
 - After receiving this consolidated response, the software vendor is free to release software for tax preparation as long as any subsequent revisions to the schedules do not change the fields.
 - Find the mailing address for the testing vendor below. Separate and simultaneous mailings to the IRS and the vendor will reduce testing time.
-

7.1.6

Procedures for Reducing Testing Time

In order to help provide incentives to the software development community to participate in the Schedule K-1 2-D project, the IRS has committed to expediting the testing of bar-coded Schedules K-1 and their associated parent returns. To receive this expedited service, follow the instructions below.

- Mail the parent returns (Forms 1065, 1120S, 1041) and associated bar-coded Schedule(s) K-1 to the appropriate address below in a separate package from all other approval requests.

Internal Revenue Service
Attn: Bar-Coded K-1
SE:W:CAR:MP:T:M:S, IR 6526
1111 Constitution Avenue, NW
Washington, DC 20224

- Mail one copy of the parent form(s) and Schedule(s) K-1 to the IRS and another copy to the testing vendor at the address below.

Northrop Grumman Information Systems
Attn: Cecilia Siamundo/ Elizabeth Ragonese
7555 Colshire Drive
McLean, VA 22102
Phone: 703-556-3619

- Include multiple email and phone contact points in the packages.
- While the IRS can expedite bar-coded Schedules K-1 and their associated parent returns, it cannot expedite the approval of non-associated tax returns.
- Vendors should comply with all NACTP guidelines especially in regards to mil size and error correction level.
- Submissions should include vendor ID code printed and in the bar code.
- If a change is made to the bar code after approval, be sure to increment the version number.

Section 7.2 — Guidelines for Substitute Forms 8655

7.2.1 Increased Standardization for Forms 8655

Increased standardization for reporting information on substitute Forms 8655 is now required to aid in processing and for compliance purposes. Please follow the guidelines in Section 7.2.2.

7.2.2 Requirements for Substitute Forms 8655

Please follow these specific requirements when producing substitute Forms 8655.

- The first line of the title must be “Reporting Agent Authorization.”
- If you want to include a reference to “State Limited Power of Attorney,” it can be in parentheses under the title. “State” must be the first word within the parentheses.
- You must include “Form 8655” on the form.
- While the line numbers do not have to match the official form, the sequence of the information must be in the same order.
- The size of any variable data must be printed in a font no smaller than 10-point.
- For adequate disclosure checks, the following must be included for each taxpayer:
 - Name,
 - EIN, and
 - Address.
- At this time, Form 944 will not be required if Form 941 is checked. Only those forms that the reporting agent company supports need to be listed.
- The jurat (perjury statement) must be identical with the exception of references to line numbers.
- A contact name and number for the reporting agent is not required.
- You must include line 17, or the equivalent line, and it must include two checkboxes.
- Any state information included should be contained in a separate section of the substitute form. Preferably this information will be in the same area as line 19 of the official form.
- All substitute Forms 8655 must be approved by the Substitute Forms Unit as outlined in the Form 8655 specifications in Publication 1167.

- If you have not already been assigned a 3-letter source code, you will be given one when your substitute form is submitted for approval. This source code should be included in the lower left corner of the form.
 - The 20-day assumed approval policy does not apply to Form 8655 approvals.
-

Part 8

Additional Information

Section 8.1 — Forms for Electronically Filed Returns

8.1.1 Electronic Filing Program

Electronic filing is a method by which authorized providers transmit tax return information to an IRS Service Center in the format of the official IRS forms. The IRS accepts both refund and balance due forms that are filed electronically.

8.1.2 Applying to Participate in IRS *e-file*

Anyone wishing to participate in IRS *e-file* of tax returns must submit an *e-file* application. The application can be completed and submitted electronically on the IRS website at IRS.gov after first registering for e-services on the website.

8.1.3 Obtaining the Taxpayer Signature / Submission of Required Paper Documents

Taxpayers choosing to electronically prepare and file their return will be required to use the Self-Select PIN method as their signature.

Electronic Return Originators (EROs) can *e-file* individual income tax returns only if the returns are signed electronically using either the Self-Select or Practitioner PIN method.

Taxpayers must use Form 8453, U.S. Individual Income Tax Transmittal for an IRS *e-file* Return, to send supporting documents that are required to be submitted to the IRS.

For specific information about electronic filing, refer to Publication 1345, Handbook for Authorized IRS *e-file* Providers of Individual Income Tax Returns and Publication 1346, Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns.

8.1.4 Guidelines for Preparing Substitute Forms in the Electronic Filing Program

A participant in the electronic filing program, who wants to develop a substitute form should follow the guidelines throughout this publication and send a sample form for approval to the Substitute Forms Unit at the address in *Part 1*. If you do not prepare Substitute Form 8453 using a font in which all IRS wording fits on a single page, the form will not be accepted.

Note. Use of unapproved forms could result in suspension of the participant from the electronic filing program.

Section 8.2 — Effect on Other Documents

8.2.1 Effect on Other Documents

This revenue procedure supersedes Revenue Procedure 2011–61, 2011–52 I.R.B. 990.

Exhibit A-1 (Preferred Format)

SCHEDULE A (Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on Form 1040

Itemized Deductions

► Information about Schedule A and its separate instructions is at www.irs.gov/form1040.

► Attach to Form 1040.

OMB No. 1545-0074

2012

Attachment
Sequence No. **07**

Your social security number

Medical and Dental Expenses	Caution. Do not include expenses reimbursed or paid by others.			
	1	Medical and dental expenses (see instructions)	1	
	2	Enter amount from Form 1040, line 38 2		
	3	Multiply line 2 by 7.5% (.075)	3	
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-		4
Taxes You Paid	5 State and local (check only one box):		5	
	a <input type="checkbox"/> Income taxes, or			
	b <input type="checkbox"/> General sales taxes			
	6	Real estate taxes (see instructions)	6	
	7	Personal property taxes	7	
	8	Other taxes. List type and amount ►	8	
	9 Add lines 5 through 8			9
	Interest You Paid	10	Home mortgage interest and points reported to you on Form 1098	10
11		Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ►	11	
12		Points not reported to you on Form 1098. See instructions for special rules	12	
13		Mortgage insurance premiums (see instructions)	13	
14		Investment interest. Attach Form 4952 if required. (See instructions.)	14	
15		Add lines 10 through 14		15
Gifts to Charity		16	Gifts by cash or check. If you made any gift of \$250 or more, see instructions	16
	17	Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500	17	
	18	Carryover from prior year	18	
	19	Add lines 16 through 18		19
Casualty and Theft Losses	20	Casualty or theft loss(es). Attach Form 4684. (See instructions.)		20
Job Expenses and Certain Miscellaneous Deductions	21	Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ►	21	
	22	Tax preparation fees	22	
	23	Other expenses—investment, safe deposit box, etc. List type and amount ►	23	
	24	Add lines 21 through 23	24	
	25	Enter amount from Form 1040, line 38 25		
	26	Multiply line 25 by 2% (.02)	26	
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-		27
Other Miscellaneous Deductions	28	Other—from list in instructions. List type and amount ►		28
Total Itemized Deductions	29	Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40		29
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here <input type="checkbox"/>		

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule A (Form 1040) 2012

Exhibit A-2 (Acceptable Format)

SCHEDULE A (Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on Form 1040

Itemized Deductions

► Information about Schedule A and its separate instructions is at www.irs.gov/form1040.

► Attach to Form 1040.

OMB No. 1545-0074

2012

Attachment
Sequence No. **07**

Your social security number

Medical and Dental Expenses	Caution. Do not include expenses reimbursed or paid by others.			
1	Medical and dental expenses (see instructions)	1		
2	Enter amount from Form 1040, line 38 2			
3	Multiply line 2 by 7.5% (.075)	3		
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-			4
Taxes You Paid	5 State and local (check only one box):			
	a <input type="checkbox"/> Income taxes, or	5		
	b <input type="checkbox"/> General sales taxes			
6	Real estate taxes (see instructions)	6		
7	Personal property taxes	7		
8	Other taxes. List type and amount ►	8		
9	Add lines 5 through 8			9
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10		
Note. Your mortgage interest deduction may be limited (see instructions).	11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ►	11		
	12 Points not reported to you on Form 1098. See instructions for special rules	12		
	13 Mortgage insurance premiums (see instructions)	13		
	14 Investment interest. Attach Form 4952 if required. (See instructions.)	14		
	15 Add lines 10 through 14			15
Gifts to Charity	16 Gifts by cash or check. If you made any gift of \$250 or more, see instructions.	16		
If you made a gift and got a benefit for it, see instructions.	17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500	17		
	18 Carryover from prior year	18		
	19 Add lines 16 through 18			19
Casualty and Theft Losses	20 Casualty or theft loss(es). Attach Form 4684. (See instructions.)			20
Job Expenses and Certain Miscellaneous Deductions	21 Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ►	21		
	22 Tax preparation fees	22		
	23 Other expenses—investment, safe deposit box, etc. List type and amount ►	23		
	24 Add lines 21 through 23	24		
	25 Enter amount from Form 1040, line 38 25			
	26 Multiply line 25 by 2% (.02)	26		
	27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-			27
Other Miscellaneous Deductions	28 Other—from list in instructions. List type and amount ►			28
Total Itemized Deductions	29 Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40			29
	30 If you elect to itemize deductions even though they are less than your standard deduction, check here <input type="checkbox"/>			

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule A (Form 1040) 2012

Exhibit B-1 (Preferred Format)

Form **2106-EZ**

Unreimbursed Employee Business Expenses

OMB No. 1545-0074

2012

Attachment
Sequence No. **129A**

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040 or Form 1040NR.

▶ Information about Form 2106 and its separate instructions is available at www.irs.gov/form2106.

Your name	Occupation in which you incurred expenses	Social security number
-----------	---	------------------------

You Can Use This Form Only if All of the Following Apply.

- You are an employee deducting ordinary and necessary expenses attributable to your job. An ordinary expense is one that is common and accepted in your field of trade, business, or profession. A necessary expense is one that is helpful and appropriate for your business. An expense does not have to be required to be considered necessary.
- You **do not** get reimbursed by your employer for any expenses (amounts your employer included in box 1 of your Form W-2 are not considered reimbursements for this purpose).
- If you are claiming vehicle expense, you are using the standard mileage rate for 2012.

Caution: You can use the standard mileage rate for 2012 **only if:** (a) you owned the vehicle and used the standard mileage rate for the first year you placed the vehicle in service, **or** (b) you leased the vehicle and used the standard mileage rate for the portion of the lease period after 1997.

Part I Figure Your Expenses

1	Complete Part II. Multiply line 8a by 55.5¢ (.555). Enter the result here	1		
2	Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work	2		
3	Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment	3		
4	Business expenses not included on lines 1 through 3. Do not include meals and entertainment	4		
5	Meals and entertainment expenses: \$ _____ × 50% (.50). (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses incurred while away from home on business by 80% (.80) instead of 50%. For details, see instructions.)	5		
6	Total expenses. Add lines 1 through 5. Enter here and on Schedule A (Form 1040), line 21 (or on Schedule A (Form 1040NR), line 7). (Armed Forces reservists, fee-basis state or local government officials, qualified performing artists, and individuals with disabilities: See the instructions for special rules on where to enter this amount.)	6		

Part II Information on Your Vehicle. Complete this part **only** if you are claiming vehicle expense on line 1.

7 When did you place your vehicle in service for business use? (month, day, year) ▶ _____ / _____ / _____

8 Of the total number of miles you drove your vehicle during 2012, enter the number of miles you used your vehicle for:

a Business _____ b Commuting (see instructions) _____ c Other _____

9 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

10 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

11a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If "Yes," is the evidence written? ☐ Yes ☐ No

For Paperwork Reduction Act Notice, see your tax return instructions.

Form **2106-EZ** (2012)

Exhibit B-2 (Acceptable Format)

Form **2106-EZ**

Unreimbursed Employee Business Expenses

OMB No. 1545-0074

2012

Attachment
Sequence No. **129A**

Department of the Treasury
Internal Revenue Service (99)

► Attach to Form 1040 or Form 1040NR.
► Information about Form 2106 and its separate instructions is available at www.irs.gov/form2106.

Your name	Occupation in which you incurred expenses	Social security number
-----------	---	------------------------

You Can Use This Form Only if All of the Following Apply.

- You are an employee deducting ordinary and necessary expenses attributable to your job. An ordinary expense is one that is common and accepted in your field of trade, business, or profession. A necessary expense is one that is helpful and appropriate for your business. An expense does not have to be required to be considered necessary.
- You **do not** get reimbursed by your employer for any expenses (amounts your employer included in box 1 of your Form W-2 are not considered reimbursements for this purpose).
- If you are claiming vehicle expense, you are using the standard mileage rate for 2012.

Caution: You can use the standard mileage rate for 2012 **only if:** (a) you owned the vehicle and used the standard mileage rate for the first year you placed the vehicle in service, **or** (b) you leased the vehicle and used the standard mileage rate for the portion of the lease period after 1997.

Part I Figure Your Expenses

1	Complete Part II. Multiply line 8a by 55.5¢ (.555). Enter the result here	1	
2	Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work	2	
3	Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment	3	
4	Business expenses not included on lines 1 through 3. Do not include meals and entertainment	4	
5	Meals and entertainment expenses: \$ _____ × 50% (.50). (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses incurred while away from home on business by 80% (.80) instead of 50%. For details, see instructions.)	5	
6	Total expenses. Add lines 1 through 5. Enter here and on Schedule A (Form 1040), line 21 (or on Schedule A (Form 1040NR), line 7). (Armed Forces reservists, fee-basis state or local government officials, qualified performing artists, and individuals with disabilities: See the instructions for special rules on where to enter this amount.)	6	

Part II Information on Your Vehicle. Complete this part **only** if you are claiming vehicle expense on line 1.

7 When did you place your vehicle in service for business use? (month, day, year) ► _____ / _____ / _____

8 Of the total number of miles you drove your vehicle during 2012, enter the number of miles you used your vehicle for:

a Business _____ b Commuting (see instructions) _____ c Other _____

9 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

10 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

11a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If "Yes," is the evidence written? ☐ Yes ☐ No

For Paperwork Reduction Act Notice, see your tax return instructions.

Form **2106-EZ** (2012)

Exhibit C
Software Developers Voucher

Form **1040-ES**
Department of the Treasury
Internal Revenue Service

2012 Estimated Tax

Payment Voucher 1

OMB No. 1545-0074

Detach Coupon Below
Before Mailing



Tear off here

Form **1040-ES**
Department of the Treasury
Internal Revenue Service

2012 Estimated Tax

Payment Voucher 1

OMB No. 1545-0074

File only if you are making a payment of estimated tax by check or money order. Mail this voucher with your check or money order payable to **"United States Treasury."** Write your social security number and "2012 Form 1040-ES" on your check or money order. Do not send cash. Enclose, but do not staple or attach, your payment with this voucher.

Calendar year—Due April 17, 2012

Amount of estimated tax you are paying
by check or money order.

Dollars

Cents

1.425

XXXX

William T THOMAS
511 JONATHAN CAROL BLVD
JEWELL, OH 43530

PO BOX 970006
ST. LOUIS, MO 63197-0006

400011018 HT THOM 30 0 201012 430

the mandatory language in section 5.04 of Rev. Proc. 2013–14.

EXTENSION OF THE EFFECTIVE DATE OF REV. PROC. 2013–14

Any consent to disclose or consent to use tax return information that a tax return preparer obtains during calendar year 2013 with respect to a taxpayer filing a return in the Form 1040 series may contain either the mandatory language in section

4.04 of Rev. Proc. 2008–35 or the mandatory language in section 5.04 of Rev. Proc. 2013–14. Any consent to disclose or consent to use tax return information obtained on or after January 1, 2014, must contain the mandatory language in Rev. Proc. 2013–14.

EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2013–14 is modified.

The principal author of this revenue procedure is Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact Mark Shurtliff at (202) 622–4910 (not a toll-free call).

Part IV. Items of General Interest

Partial Withdrawal of Notice of Proposed Rulemaking and Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulation.

Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated

REG-155929-06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published on September 24, 2009, relating to the payout requirements for Type III supporting organizations that are not functionally integrated. The withdrawal affects Type III supporting organizations that are not functionally integrated. In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9605) regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations. Those regulations reflect changes to the law made by the Pension Protection Act of 2006 and will affect Type III supporting organizations and their supported organizations. The text of those temporary regulations published in this issue of the Bulletin also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 28, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-155929-06), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday

between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-155929-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-155929-06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Preston J. Quesenberry at (202) 622-6070; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Final and temporary regulations in this issue of the Bulletin contain amendments to the Income Tax Regulations (26 CFR part 1) regarding organizations described in section 509(a)(3) of the Internal Revenue Code (Code), which are known as supporting organizations. The final and temporary regulations provide requirements to qualify as a supporting organization that is operated in connection with one or more supported organizations (called "Type III Supporting Organizations"). Those regulations reflect changes to the law made by the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780 (2006)), and will affect Type III supporting organizations and their supported organizations. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small

entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic comments or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be available for public inspection and copying at www.regulations.gov or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Preston J. Quesenberry, and Stephanie N. Robbins, Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, §§1.509(a)-4(i)(5)(ii)(B) and 1.509(a)-4(i)(8) of the notice of proposed rulemaking (REG-155929-06) that was published in the **Federal Register** on September 24, 2009, (78 FR 48672) are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.509(a)–4 is amended by revising paragraphs (i)(5)(ii)(B), (i)(5)(ii)(C), and (i)(8) to read as follows:

§1.509(a)–4 Supporting organizations.

* * * * *

(i) * * *

(5) * * *

(ii) * * *

(B) [The text of proposed amendments to §1.509(a)–4(i)(5)(ii)(B) is the same as the text of §1.509(a)–4T(i)(5)(ii)(B) published elsewhere in this issue of the Bulletin].

(C) [The text of proposed amendments to §1.509(a)–4(i)(5)(ii)(C) is the same as the text of §1.509(a)–4T(i)(5)(ii)(C) published elsewhere in this issue of the Bulletin].

* * * * *

(8) [The text of proposed amendments to §1.509(a)–4(i)(8) is the same as the text of §1.509(a)–4T(i)(8) published elsewhere in this issue of the Bulletin].

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on December 21, 2012, 4:15 p.m., and published in the issue of the Federal Register for December 26, 2012, 77 F.R. 76426)

Announcement 2013–12

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Eliminating printing on paper of the Internal Revenue Bulletin (IRB) and eliminating the creation of the Cumulative Bulletin (CB)

SUMMARY: The IRS is no longer printing paper copies of the IRB, which the IRS distributed directly to certain stakeholders. The yearly subscription sold by the Superintendent of Documents is unaffected. Also, the IRS will not create the CB after the 2008–2 edition.

DATE: This announcement is effective immediately.

SUPPLEMENTARY INFORMATION:

Background

The IRB is available on IRS.gov before printed copies are available. Also, the majority of items (about two-thirds) that appear in the IRB are released with a News Release about a month ahead of when the item appears in the IRB. Since all items in the IRB are available electronically, almost a month in advance of being available in the printed IRB, we are eliminating the printing of paper copies of the IRB, which are distributed directly from the IRS. The cost savings to printing and postage would be \$148,000 annually.

Media and Publications contacted several IRB external stakeholders in May 2011 to elicit their comments and concerns. From the stakeholders we heard from, the most pressing concerns were for paper copies of the January issue continue to be printed and electronic notification of when the new IRB is available.

Accordingly, as a cost cutting measure, the IRS is no longer printing paper copies of the IRB, which the IRS distributed directly to certain stakeholders. Also, the IRS will not create the CB after the 2008–2 edition.

FOR FURTHER INFORMATION CONTACT:

If you have comments concerning this issue, you can write to the Gerald J. Shields, LL.M., Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR–6526, Washington, DC 20224. Do not send any tax forms to this address.

U.S.–Norway Agreement on Fiscally Transparent Entities

Announcement 2013–14

The following is a copy of the Competent Authority Agreement (“the Agreement”) that was released to the public on January 31, 2013, by the Competent Authorities of the United States and Norway regarding the eligibility of entities that are treated as fiscally transparent under the laws of either Contracting State to benefit

under the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, signed on December 3, 1971, and as amended by the Protocol signed on September 19, 1980 (the “Treaty”).

The text of the Agreement is as follows:

COMPETENT AUTHORITY AGREEMENT

The Competent Authorities of the United States and Norway hereby enter into the following mutual agreement regarding the eligibility of entities that are treated as fiscally transparent under the laws of either Contracting State to benefit under the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, signed on December 3, 1971, and as amended by the Protocol signed on September 19, 1980 (the “Treaty”). This agreement clarifies the cases in which fiscally transparent entities are entitled to treaty benefits and clarifies the procedure for claiming treaty benefits from Norway. The agreement is entered into under paragraph 2 of Article 27 (Mutual Agreement Procedure) of the Treaty.

1) Eligibility of fiscally transparent entities for treaty benefits

Paragraph 1(a)(ii) of Article 3 (Fiscal Residence) of the Treaty provides, in relevant part, that the term “resident of Norway” means a partnership, estate or trust only to the extent that the income derived by such person is subject to Norwegian tax as the income of a resident.

Paragraph 1(b)(ii) of Article 3 of the Treaty provides, in relevant part, that the term “resident of the United States” means a partnership, estate, or trust only to the extent that the income derived by such person is subject to U.S. tax as the income of a resident.

The Competent Authorities agree that in applying paragraphs 1(a)(ii) and 1(b)(ii) of Article 3, income from sources within one of the Contracting States received by an entity, wherever organized, that is treated as fiscally transparent under the laws of either Contracting State will be

treated as income derived by a resident of the other Contracting State to the extent that such income is subject to tax as the income of a resident of the other Contracting State.

For an entity to be fiscally transparent, the income subject to tax in the hands of the resident must have the same source and character as if the income were received directly by the resident. It is not relevant whether the entity would be fiscally transparent for tax purposes in the other Contracting State or any third jurisdiction in which the entity is organized. For U.S. tax purposes, a fiscally transparent entity includes any entity treated as a partnership under subchapter K of the Internal Revenue Code (Code), a “disregarded entity” (an entity such as an LLC that is disregarded as an entity separate from its single member owner), a subchapter S corporation (a domestic corporation with exclusively U.S. shareholders described in section 1361 of the Code), a “grantor trust” described in section 671 of the Code, *et seq.*, and a common trust fund within the meaning of section 584 of the Code.

For example, if a resident of the United States is a partner in a partnership or a member of a limited liability company (“LLC”) organized in the United States, and the entity is treated for U.S. federal tax purposes as a partnership, the resident of the United States would be entitled to benefits of the Treaty on the income that the resident derives from Norway through the partnership to the extent of the U.S. resident’s distributive share of that income. Similar rules would apply to a resident of the United States that is a shareholder of a subchapter S corporation, the single member owner of an LLC that is a disregarded

entity, or an owner of a grantor trust that derives income from Norway through the grantor trust.

2) Procedures for entities that are fiscally transparent for U.S. tax purposes to claim treaty benefits from Norway

An entity, wherever organized, that is treated as fiscally transparent for U.S. federal tax purposes and that has a U.S. resident member, partner or owner, may claim treaty benefits from Norway on behalf of the U.S. resident by providing the Norwegian withholding agent with a U.S. residency certification that identifies the names of the fiscally transparent entity and the U.S. resident.

For example, a partnership, whether organized in the United States, Norway, or a third jurisdiction, may obtain a certificate of residence on Form 6166 on behalf of its partners, by submitting a request for certification on Form 8802 (*Application for U.S. Residency Certification*) to the Internal Revenue Service. For those partnerships required to file a Form 1065, *U.S. Return of Partnership Income*, generally domestic partnerships and foreign partnerships with U.S. source income, the Form 6166 confirms the filing of such form and includes the names of all partners who have filed tax returns as U.S. residents. The Form 6166 will inform the withholding agent to contact the partnership directly to provide information regarding the allocation of the Norwegian source income to the listed U.S. partners. If a foreign partnership with U.S. partners is not required to file a Form 1065, the Form 6166 will confirm that position and otherwise contain the same information regarding its

U.S. partners. The same procedures apply to an LLC seeking certification if it has more than one owner and is treated as a partnership for U.S. tax purposes.

An S corporation may submit a Form 8802 and obtain a Form 6166 certificate of residence in a manner similar to that of a partnership. A Form 6166 confirms the filing of an information return, Form 1120S, *U.S. Income Tax Return for an S Corporation*, as required for an S corporation, and includes a list of shareholders who filed returns as U.S. residents.

A grantor trust that is owned by a U.S. resident may submit a Form 8802 to obtain a Form 6166 that provides that the owner or owners listed on the form have filed tax returns as U.S. residents.

A U.S. resident that is the single member owner of an LLC or other entity that is disregarded as an entity separate from its owner for U.S. tax purposes may submit a Form 8802 to obtain a Form 6166 that provides that the LLC or other entity is (or is treated as) a branch, division or business unit of its single member owner and that such single member has filed a tax return as a resident of the United States.

Persons applying for a Form 6166 must identify the type of entity as well as the country for which they are requesting certification. This permits the United States to determine that a taxpayer is a resident for U.S. tax purposes as well as for purposes of the applicable treaty. See Form 8802 and the associated instructions. As such, Norway accepts the Form 6166 as a certification of U.S. residency for U.S. tax purposes as well as for purposes of the Treaty.

Agreed to by the undersigned competent authorities:

Michael Danilack
United States Competent Authority

Date

Stig Sollund
Norwegian Competent Authority

Date

Announcement 2013–15

This announcement contains a revised Exhibit: Sample Notice to Interested

Parties, attached to Rev. Proc. 2013–6, 2013–1 I.R.B. 198. The Exhibit is revised to include the correct addresses for submitting applications for determination letters and comments submitted by in-

terested parties, in accordance with the corrections to Rev. Proc. 2013–6 made by Ann. 2013–13, 2013–9 I.R.B. 532.

**EXHIBIT: SAMPLE NOTICE
TO INTERESTED PARTIES**

The Exhibit set forth below, may be used to satisfy the requirements of section 18 of this revenue procedure.

EXHIBIT: SAMPLE NOTICE TO INTERESTED PARTIES

1. Notice To: _____ [describe class or classes of interested parties]

An application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan:

2. _____

(name of plan)

3. _____

(plan number)

4. _____

(name and address of applicant)

5. _____

(applicant EIN)

6. _____

(name and address of plan administrator)

7. The application will be filed on _____ for an advance determination as to whether the plan meets the qualification requirements of § 401 or 403(a) of the Internal Revenue Code of 1986, with respect to the plan's _____ [initial qualification, amendment, termination, or partial termination].

The application will be filed with:

Internal Revenue Service
EP Determinations
P. O. Box 12192
Covington, KY 41012-0192

8. The employees eligible to participate under the plan are:

9. The Internal Revenue Service _____ [has/has not] previously issued a determination letter with respect to the qualification of this plan.

RIGHTS OF INTERESTED PARTIES

10. You have the right to submit to EP Determinations, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code. Your comments to EP Determinations may be submitted to:

Internal Revenue Service
EP Determinations
Attn: Customer Service Manager
P. O. Box 2508
Cincinnati, OH 45202

You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to EP Determinations at the Cincinnati address above.

REQUESTS FOR COMMENTS BY THE DEPARTMENT OF LABOR

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is _____. If you request the Department to comment, your request must be in writing and must specify the matters upon which comments are requested, and must also include:

- (1) the information contained in items 2 through 5 of this Notice; and
- (2) the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
ATTN: 3001 Comment Request
U. S. Department of Labor,
200 Constitution Avenue, N.W.
Washington, D.C. 20210

COMMENTS TO THE INTERNAL REVENUE SERVICE

12. Comments submitted by you to EP Determinations must be in writing and received by it by _____. However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to EP Determinations to be received by it within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by _____, whichever is later, but not after _____. A request to the Department to comment on your behalf must be received by it by _____ if you wish to preserve your right to comment on a matter upon which the Department declines to comment, or by _____ if you wish to waive that right.

ADDITIONAL INFORMATION

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 17 and 18 of Rev. Proc. 2013–6. Additional information concerning this application (including, where applicable, an updated copy of the plan and related trust; the application for determination; any additional documents dealing with the application that have been submitted to the Service; and copies of section 17 of Rev. Proc. 2013–6 are available at _____ during the hours of _____ for inspection and copying. (There is a nominal charge for copying and/or mailing.)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

Internal Revenue Service

Washington, DC 20224

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